Supreme Court, U.S.
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Docket No. 09-843

In The
SUPREME COURT OF THE UNITED STATES

THANH VONG HOAI, et al.,
Petitioners

v.

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA, et al.
Respondents.

On Petition for Writ of Certiorari To The United States Court Of Appeals For The District Of Columbia Circuit

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APPENDIX
VOLUME I

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UNITED STATES COURT OF APPEALS
For the District of Columbia Circuit

NO. 06-7182 **September Term 2006**
1:08-CV-00210
Filed On: January 11, 2007

Thanh Vong Hoai, et al.,
Appellants

v.

Superior Court for the District
of Columbia, et al.
Appellees.

BEFORE: Henderson, Randolph, and Tatel, Circuit Judges

ORDER

Upon consideration of the motion for a stay pending appeal, the opposition thereto, and the reply; the motion for summary reversal, the opposition thereto, and the reply; and the motion for summary Affirmance and the opposition thereto; it is

ORDERED that the motion for summary Affirmance be granted and the motion for summary reversal be denied. The merits of the parties' position are so clear as to warrant summary action. See Taxpayers Watchdog, Inc. v. Stanley, 819 F.2d 294, 297 (D.C. Cir 1987) (per curiam). The Anti-

Injunction Act prohibits a federal court from granting "an injunction to stay proceedings in a State court except [1] as expressly authorized by Act of Congress, or [2] where necessary in aid of its jurisdiction, or [3] to protect or effectuate its judgments." 28 U.S.C. § 2283. This case concerns the third exception, which is known as the 'relitigation" exception. "[A]n essential prerequisite for applying the relitigation exception is that the claims or issues which the federal injunction insulates from litigation in state proceedings actually have been decided by the federal court." Chick Kam Choo v. Exxon Corp., 486 U.S. 140, 148 (1988). Because neither this court nor the district court actually decided the issue which appellants sought to insulate from litigation in the local District of Columbia courts, see Hoai v. Sun Refining and Marketing Co., Inc., 866 F.2d 1515 (D.C. Cir. 1989); Hoai v. Sun refining and Marketing Co., 1990 U.S. Dist. LEXIS 13015 (D.D.C. Oct 1, 1990), appellants' requested injunction is not covered by the relitigation exception to the Anti-Injunction Act.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C.. Cir. Rule 41.

Per Curiam

UNITED STATES COURT OF APPEALS
For the District of Columbia Circuit

NO. 08-7067 **September Term 2008**
1:08-CV-00210
Filed On: July 16, 2009

Thanh Vong Hoai, et al.,
Appellants

v.

Superior Court for the District
of Columbia, et al.
Appellees.

BEFORE: Sentelle, Chief Judge, and Ginsburg, Henderson, Rogers, Tatel, Garland, Brown, Griffith, and Kavanaugh, Circuit Judges.

ORDER

Upon consideration of the petition for rehearing en banc, and the absence of a request by any member of the court for a vote, it is

ORDERED that the petition be denied.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk
By: /s/
Michael C. McGrail

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

THANH VONG HOAI, *et al.*
Plaintiffs,

V

CIVIL ACTION NO.
1:06-cv- 00210-RJL

The SUPERIOR COURT of the
DISTRICT of COLUMBIA, *et al.*,
Defendants.

ORDER

For the reasons set forth in the Memorandum Opinion entered this date, it is, this 13th day of February, 2007, hereby

ORDERED that [#11] Plaintiff's Motion for a Preliminary and Permanent Injunction is DENIED; and it is further

ORDERED that Count I of the Complaint is DISMISSED.

SO ORDERED.

RICHARD J. LEON
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

THANH VONG HOAI, *et al.*
Plaintiffs,

v.

CIVIL ACTION
No. 06-cv- 00210
RJL

The SUPERIOR COURT of the
DISTRICT of COLUMBIA, *et al.*,
Defendants.

MEMORANDUM OPINION
(February 13, 2007) [#11]

Plaintiffs, Thanh Vong Hoa, John D. Hemenway and David Hemenway, filed the instant action against defendants, the Superior Court of the District of Columbia; the District of Columbia Court of Appeals; the Panel of Judges of the District of Columbia Court of Appeals; Anne B. Wicks, Executive Officer, District of Columbia Courts,; The Boarad of Judges of the District of Columbia; Rufus G. King, III, Chief Judge, Superior Court of the District of Columbia; Eric T. Washington, Chief Judge, District of Columbia Court of Appeals; and Herbert B. Dixon, Jr., Judge, Superior Court of the District of Columbia, seeking inter alia, to enjoin the municipal courts of the District of Columbia – pursuant to the "relitigation exception" to the Anti-

Injunction Act, 28 U.S.C. § 2283 – from permitting the litigation of an issue that plaintiffs contend was already decided in a previous action before Judge Oberdorfer of this Court. (See Am. Compl. At Count I.) Currently before the Court is plaintiffs' Motion for Preliminary and Permanent Injunction. Upon due consideration of the parties' submission, the relevant law, and the entire record herein, plaintiffs' Motion is DENIED.

BACKGROUND[1]

In early 1986, using funds partially furnished by non-party Thanh Van Vo ("Vo"), plaintiff Thanh Vong Hoai ("Hoai") entered into a franchise agreement with non-party Sun Refining and Marketing Company ("Sunoco") for a term ending March 31, 1987. Generally, the agreement leased to Hoai a service station located at 2305 Pennsylvania Avenue, S.E. in Washington D.C. and authorized him to sell Sunoco branded motor fuel. There is pending an unresolved dispute between Hoai and Vo as to which of them was entitled to possession and was in fact in possession from April through August 25,

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1 The "Background" section of this Memorandum Opinion has been adapted directly from our Circuit Court's earlier opinion in *Hoai v. Sun Refining and Marketing Co.*, 866 F.2d 1515 (1989), and Judge Oberdorfer's opinion in *Hoai v. Sun Refining & Marketing Co.*, No. 87-2456-LFO, 1990 U.S. Dist. LEXIS 13015 (D.D.C. Oct. 1, 1990). Internal quotations and citations are omitted.

2986. It is Hoai's claim that he was threatened with murder and then driven out of his gas station by Vo, with the help of other Vietnamese.

After Hoai attempted to recover his station from Vo, Vo filed suit in D.C. Superior Court against Hoai, Sunoco, and others on August 28, 1986. Following a hearing the next day, the court granted a temporary restraining order ("TRO") that reinstated Vo in the gas station, removed Hoai from the station, and directed Sunoco to continue supplying petroleum products to the station.

On September 8, 1986, the Superior Court ratified a consent order between Sunoco and Vo. The order extended the TRO for seven months as to Sunoco and Vo, and required Sunoco to continue to supply petroleum products to the station after the expiration of the TRO, until the dispute between Vo and Hoai was resolved or the franchise terminated. The effect of the consent order was specifically limited to Sunoco and Vo.

Hoai was not informed about the consent order until after it was ratified. He then appealed the order to the D.C. Court of Appeals. The appeal was still pending on April 7, 1987, when Sunoco terminated the franchise. Neither Hoai nor Vo is now in possession of the station. On March 12, 1988, the D.C. Court of Appeals ruled that Hoai's appeal of the consent order was moot, and the court remanded

the case to the Superior Court for a trial on the merits of Vo's claims against Hoai.

Meanwhile, on September 8, 1987, Hoai filed , Sunoco had unlawfully terminated Hoai's franchise in violation of the Federal Petroleum Marketing Practices Act ("PMPA") 15 U.S.C. § 2801, *et seq.*, by entering into the agreement with Vo embodied in the consent order. Sunoco moved to dismiss the complaint on abstention grounds.

On May 26, 1988, Judge Oberdorfer of our Court denied Sunoco's motion, but *sua sponte* stayed the proceedings in order to give deference to the Superior Court. On appeal, our Circuit Court treated the stay as a dismissal, reversed the District Court's decision, and remanded the case for a trial on the merits.

On remand, upon consideration of the parties' cross-motions for summary judgment, the District Court entered judgment in favor of Hoai. The Court held that Sunoco had terminated the franchise agreement without notice on September 8, 1986 (at the latest) in violation of the PMPA.

Over twenty years later, on February 2, 2006, plaintiffs filed the instant action in this Court, and on June 16, 2006, they amended their Complaint to add the claim that serves as the basis of their current Motion for Preliminary and Permanent

Injunction. (See Am. Compl. At Count I.) Simply stated, plaintiffs now seek to enjoin the still-pending action between Hoai, Vo, and others in the D.C. municipal courts (see Vo v. Hoai, No. 7075-86 (D.C. Sup. Ct.)), on the basis that it involves an issue[2] that has been previously ruled upon by Judge Oberdorfer of this Court. For the following reasons, plaintiffs' Motion is DENIED in its entirety, and Court I of the Amended Complaint is DISMISSED.

ANALYSIS

The Anti-Injunction Act, 28 U.S.C. § 2283, generally bars a federal court form granting an injunction "to stay proceedings in a State Court."[3]

In the face of this prohibition, plaintiffs move this Court for just such an injunction.[4] To be clear,

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[2] Although plaintiffs' initial Motion seems to merge together the concepts of claim and issue preclusion (see, e.g., Pls.' Mot. At 1 ("[Plaintiffs] seek to enjoin relitigation in the municipal courts of the District of Columbia of the claim and issue thus precluded.")), their Reply to the Opposition of the Defendants to Plaintiffs' Motion for a Preliminary and Permanent Injunction ("Reply") makes clear that "they do not seek claim preclusion; their motion is for issue preclusion" (Pls.' Reply at 8). Specifically, plaintiffs claim that "the 'issue' of ownership of the franchise was litigated and decided in the PMPA suit by Hoai against Sun in this Court" and therefore should be precluded from relitigation in the D.C. municipal courts. *Id.*

[3] The Court will assume that the District of Columbia is a "State" within the meaning of §2283. See Thomas v. Powell, 247 F.3d, 260, 261 (D.C. Cir. 2001).

[4] Plaintiffs move for both preliminary and permanent relief. Because this Court finds that it is able to make a merits

defendants in this action – and thus the parties that plaintiffs seek to enjoin – are the Superior Court of the District of Columbia, the District of Columbia Court of Appeals, the Panel of Judges of the District of Columbia Court of Appeals, Anne B. Wickes, Executive Officer, District of Columbia Courts; the Board of Judges of the District of Columbia; Rufus G. King, III, Chief Judge, Superior Court of the District of Columbia; and Eric T. Washington, Chief Judge, District of Columbia Court of Appeals; Herbert B. Dixon, Jr., Judge, Superior Court of the District of Columbia. Because the relief requested is so extraordinary, however, plaintiffs bear a heavy burden to warrant its receipt.

Plaintiffs claim that the relief they request is permitted under an exception to the Anti-Injunction Act – commonly referred to as the 'relitigation exception" – which authorizes a federal court to enjoin a state court in order to protect or effectuate its own judgment. See 18 U.S.C. §2283 ("A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly

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determination on the record before it (as plaintiffs present the Court with a question of law, not fact), and in light of plaintiffs' motion to consolidate the Court's preliminary injunction hearing with a trial on the merits of the permanent injunction request of Count I, pursuant to Federal Rules of Civil Procedure 65(a)(2) (see Pls.' Mot. For Preliminary & Permanent Inj. ("Pls.' Mot.") at 1), the Court will GRANT plaintiffs' motion to consolidate and dispense of any separate analysis for the issuance of preliminary relief.

authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments."). In order for plaintiffs to establish that the relitigation exception should apply, however, they must demonstrate that either the doctrine of res judicata or the doctrine of collateral estoppels bars the relitigation of a particular claim or issue already decided in this Court. See *Chick Kam Choo v. Exxon Corporation*, 486 U.S. 140, 148 (1988) (explaining that the relitigation exception only applies when "the claims or issues which the federal injunction insulates from litigation in state proceedings actually have been decided by the federal court"). Although plaintiffs' initial Motion seems to merge together the concepts of claim and issues preclusion (see, e.g., Pls.' Mot. At 1) ("[Plaintiffs] seek to enjoin relitigation in the municipal courts of the District of Columbia of the claim and issue thus precluded.")), their Reply to the Opposition of the Defendants to Plaintiffs' Motion for a Preliminary and Permanent Injunction ("Reply") makes clear that "they do not seek claims preclusion; their motion is for issue preclusion " (Pls.' Reply at 8). Specifically, plaintiffs claim that 'the 'issue' of ownership of the franchise was litigated and decided in the PMPA suit by Hoai against Sun in tis Court" and is therefore precluded from relitigation by the doctrine of collateral estoppels. How so?

Pursuant to the doctrine of collateral estoppels, "the judgment in [a] prior suit precludes

relitigation of issues actually litigated and necessary to the outcome of the first action." *Parklane Hosiery Co. v Shore*, 439 U.S. 322, 327 n.5. (1979); *Yamaha Corp. of Am. V. United States*, 961 F.2d 345, 254 (D.C. Cir. 1992); *see also Connors v. Tanoma Mining Co.*, 953 F.2d 682, 684 (D.C. Cir 1992) (placing the burden of showing that the same issue has been actually litigated and necessarily determined in the prior litigation on the party seeking to preclude relitigation). Plaintiffs assert that Judge Oberdorfer's judgment in favor of Hoai on the basis that Sunoco unlawfully terminated its franchise agreement with Hoai "necessary[il]y imply[es]" that the federal court also determined "that the Sun franchise belonged to Hoai and not to Vo." (Pls.' Mot. At 13; see also id. (claiming that "[i]f [the franchise] was transferred to Vo as Vo claims in his Superior Court action, then it could not have been ruled in [the federal district court] that Sun illegally terminated a franchise belonging to Hoai in violation of a franchisor's obligations under PMPA").) In other words, plaintiffs argue that a ruling on the issue of ownership of the franchise was necessary to the outcome of the federal case, and, therefore, the state court action, which also involves the issue of ownership, is barred under the doctrine of collateral estoppels. (*See* Pls.' Mot. at 13.) I disagree.

Judge Oberdorfer could not have been more clear in his opinion that he did not rule upon the issue of actual ownership of the service station. To

the contrary, his judgment was limited to the contractual issue of whether Sunoco breached its franchise agreement with Hoai. Indeed, in his Memorandum Opinion, Judge Oberdorfer explicitly recognized that: "[t]here is pending an unresolved dispute between Hoai and Vo as to which of them was entitled to possession [of the service station] and was in fact in possession from April through August 25, 2986 ... *Whatever may be the ultimate resolution of the dispute between Vo and Hoai,* it is undisputed that Sunoco supplied motor fuel to whomever was occupying the station from April, 1986 until August 25 of that year." *Hoai,* 1990 U.S. Dist LEXIS 13015, at *1-*2 (emphasis added). More importantly, Judge Oberdorfer specifically acknowledged that "even if Sunoco had proper grounds for terminating Hoai's franchise" – such as Hoai's alleged inability to maintain possession of the premises and his absence therefrom, whether through no fault of Sunoco or Hoai himself – Sunoco's "failure to give Hoai timely statutory notice invalidated that termination." *Id.* At *16-*17. Thus, it is abundantly clear that Judge Oberdorfer separated the issue of ownership – between Hoai and Vo—from the purely contractual issue before him – between Hoai and Sunoco – and did not intend for his decision to extend, either explicitly or implicitly as plaintiffs suggest, to the issue of ownership or possession of the franchise.

Moreover, under the plain language of the PMPA itself, Judge Oberdorfer was not required to

consider the issue of ownership when making a determination about the franchise agreement and rights under that agreement. The PMPA's definition of "franchise" is limited to the contract at issue and the definition of "franchisee" is limited to a contracting party.[5] The PMPA simply does not address the "ownership" that plaintiffs wish to establish.

Finally, plaintiffs' argument that our Circuit Court "abolished the argument that the franchise ever belonged to Vo" (Pls.' Mot. at 23), must be similarly rejected. Prior to Judge Oberdorfer deciding the case on remand, our Circuit Court

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[5] The PMPA, 15 U.S.C. § 2801, et seq., provides, in pertinent part:

(1)(A): The term "franchise" means any contract-

(i) between a refiner and a distributor,

(ii) between a refiner and a retailer,

(iii) between a distributor and another distributor, or

(iv) between a distributor and a retailer ...

(B) The term "franchise" includes'

(i) any contract under which a retailer or distributor (as the case may be) is authorized or permitted to occupy leased marketing premises, which premises are to be employed in connection with the sale, consignment, or distribution of motor fuel under a trademark which is owned or controlled by such refiner or by a refiner which supplies motor fuel to the distributor which authorizes or permits such occupancy;

(ii) any contract pertaining to the supply of motor fuel which is to be sold, consigned or distributed ...

(4) The term "franchisee" means a retailer or distributor (as the case may be) who is authorized or permitted, under a franchise, to use a trademark in connection with the sale, consignment, or distribution of motor fuel.

considered whether Hoai should be allowed to bing his claims in federal court despite concurrent proceedings in Superior Court. Our Circuit Court ultimately determined that the federal action would not 'unduly interfere with the action in Superior Court" because the issues at hand in the federal and state actions were different. Hoai v. Sun Refining & Mktg. Co., 866 F.2d, 1515, 1519 (D.C. Cir. 1989 (noting that "Hoai's sole complaint involves Sunoco's agreement to continue supplying gasoline to Vo rather than to Hoai, not the Superior Court's resolution of the dispute between Vo and Sunoco or between either of those parties and Hoai"). Thus, our Circuit Court additionally concluded and acknowledged that the issues involved in the dispute between Hoai and Vo were separate and distinct from those involved in the PMPA action before Judge Oberdorfer. Accordingly, plaintiffs have not met their burden of showing that the issue they seek to enjoin from litigation in the D.C. municipal courts was actually litigated and necessarily determined by this Court.

CONCLUSION

For the foregoing reasons, the Court DENIES Plaintiffs' Motion for a Preliminary and Permanent Injunction and, accordingly, DISMISSES Count I of the Amended Complaint. An appropriate order will issue with this Memorandum Opinion.

RICHARD J. LEON
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

THANH VONG HOAI, *et al.*
Plaintiffs,

V

CIVIL ACTION
1:06-cv- 00210-RJL

The SUPERIOR COURT of the
DISTRICT of COLUMBIA, *et al.*,
Defendants.

FINAL JUDGMENT

For the reasons set for the in the Memorandum Opinion entered this 28th day of March, 2008, it is hereby

ORDERED that Defendants' Motion for to Dismiss (Dkt. #31) is GRANTED; and it is further

ORDERED that defendants' Motion to Strike the Amended Complaint (Dkt #6) is DENIED as moot; and it is further

ORDERED that the complaint is dismissed as to all defendants with prejudice.

SO ORDERED.

RICHARD J. LEON
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

THANH VONG HOAI, *et al.*
Plaintiffs,

V
NO.
RJL

CIVIL ACTION
1:06-cv- 00210-

The SUPERIOR COURT of the
DISTRICT of COLUMBIA, *et al.*,
Defendants.

MEMORANDUM OPINION
(March 28, 2008) [#31]

Thanh Vong Hoai, John D. Hemenway and David Hemenway Plaintiffs"), bring this action against, the Superior Court of the District of Columbia ("Superior Court"); the District of Columbia Court of Appeals ("D.C. Court of Appeals"); the Panel of Judges of the District of Columbia Court of Appeals; the Board of Judges of the District of Columbia; the Honorable Eric T. Washington, Chief Judge of the D.C. Court of Appeals; and Herbert B. Dixon, Jr., Judge, of the Superior Court, seeking to compel these courts to reconsider certain decisions adverse to the plaintiffs in a civil action still pending in the Superior Court and a declaratory judgment that the plaintiffs' constitutional rights have been violated by these courts' refusal to do so. (*See generally* Am. Compl.)[6] Before the Court is

[6] All parties agree that the operative complaint is the complaint ("Amended Complaint") filed on June 16, 2006.

defendants' motion to dismiss. After consideration of the parties' pleadings, the relevant law, and the entire record herein, the Court GRANTS defendants' motion.

BACKGROUND

The multi-headed hydra that is this litigation has been the subject of a myriad of earlier decisions b this Court, another District judge and our Court of Appeals.[7] Accordingly, the Court will not recite the considerable procedural history preceding this case. Suffice it to say that there is a pending case in the Superior Court between the plaintiffs, and a third party, Thanh Van Vo ("Vo"), concerning their legal rights vis a vis a Sunoco service station in Washington, DC. The Amended Complaint in this Court, by comparison, alleges certain constitutional violations by the judges of the Superior Court and the D.C. Court of Appeals (collectively "our local courts") by virtue of their prior decisions and their "policies" prohibiting the reconsideration of these earlier decisions in the Superior Court case.

In particular, plaintiffs filed this action pursuant to 42 U.S.C. § 1983 and 1981, seeking to compel our local courts to reconsider a number of

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[7] See Hoai v. Vo, 935 F.2d 3008 (D.C. Cir 1991); Hoai v. Sun Refining & Marketing Co., 866 F.2d 1515 (D.C. Cir. 1989); Hoai v. Superior Court of the District of Columbia, 473 F. Supp 2d 75 (D.D.C. 2007) (Leon, J.); Hoai v. Sun Refining & Marketing Co., No. 88702456, 1990 U.S. Dist. LEXIS 13015 9D.D.C. Oct. 1, 1990) (Oberdorfer, J.); The "Background" section of this Memorandum Opinion has been adapted, in part, from these earlier opinions.

prior adverse rulings against them.[8] (Am. Compl. ¶¶ 1-2, *see also id* . ¶¶16-22 (alleging that D.C. municipal courts have an "official policy," in violation of the Constitution, that "a judge ... cannot possibly have worked a manifest injustice when .. decisions that are clearly wrong become final.").).

DISCUSSION

1. Legal Standard

The Court may dismiss a claim under Federal Rules of Civil Procedure 12(b)(6) only if it appears, assuming the alleged facts to be true and drawing all inferences in plaintiffs' favor, that plaintiffs cannot establish "any set of facts consistent with the allegations in the complaint." *Bell Atl. Corp. v. Twombly*, 127 S. Ct. 1955, 1969 (2007); *Kowal v. MCI Commc'ns Corp.*, 16 F.3d 1271, 1276 (D.C. Cir. 1994). "While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations ... a plaintiff's obligation to provide the grounds of his entitle[ment] to relief requires more than labels and conclusions ....Factual allegations must be enough to raise a right to relief above the

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[8] Plaintiffs sought a temporary restraining order on July 25, 2006, and then a preliminary injunction on August 19, 2006. This Court denied the preliminary injunction on February 13, 2007, and dismissed Count I of the Amended Complaint. The remaining counts are as follows: (1) Declaring Invalid the Law of the Case Rule Whereby Clearly Wrong and Manifestly Unjust Decisions Cannot be Corrected and Resuming the Old Policy (Count II); (2) Declaratory and Injunctive Relief: the TRO that Never Came into Being (Count III); (3) Violation of These Plaintiffs' Rights to Have Their Claims and Those Against Them Tried by a Jury Under the Seventh Amendment as a Violation of 42 U.S.C. § 1983 (Count IV); and (4) Violation of 42 U.S.C. § 1981: Purposeful Racial Discrimination (Count V).

speculative level." *Bell Atl. Corp.*, 127 S. Ct. at 1964-65 (citations and internal quotation marks omitted). *Pro se* complaints, however, are held to 'less stringent standards than formal pleadings drafted by lawyers." Haines v. Kerner, 404 U.S. 519, 520 (1972). A *pro se* pleading is to be liberally construed by the Court. *Erickson v. Pardus*, 127 S. Ct. 2197, 2200 (2007) (citation omitted). Accordingly, *pro se* plaintiffs are not required to use specific legal terms or phrase, and the Court will "grant plaintiffs the benefit of all inferences that can be derived from the facts alleged." *Kowal, 16 F.3d at 1276.*

II. Plaintiffs Cannot State a Claim for Relief

Plaintiffs bring this action alleging a multitude of Section 1983 claims. In essence, they seek to compel our local courts to reconsider their prior rulings adverse to the plaintiffs. Although the Anti-Injunction Act, 18 U.S.C. § 2283 prohibits federal courts from "grant[ing] an injunction to stay proceedings in State court except [*inter alia*] as expressly authorized by Act of Congress," Section 1983 claims can be permissible under limited circumstances, see *Mitchum v. Foster*, 407 U.S. 225, 242 (1972).[9] Defendants move to dismiss on the grounds that the judges (Chief Judge Washington and Judge Dixon) are immune from suit and that the judicial entities (the Superior Court, the D.C. Court

[9] In addition to their Section 19983 claims, plaintiffs also bring a Section 1981 claim. Section 1981 claims, however, do not fall within any exception to the Anti-Injunction Act. See *Valle v. Etermad*, 2005 EL 579813, *1 (E.D. Pa. Mar. 11, 2005). In any event, other than their bald and conclusory statements, no facts can be gleaned from plaintiffs' complaint indicating that our local courts treated them differently on account of Hoai's ethnicity.

of Appeals, the Panel of Judges of the D.C. Court of Appeals, and the Board of Judges of the District of Columbia) are not sueable entities.[10] I agree.

Section 1983 immunizes judicial officers from injunctive relief for actions taken in their judicial capacity "unless a declaratory decree was violated or declaratory relief was unavailable." 42 U.S.C. § 1983. Since plaintiffs do not contend that our local courts violated any "declaratory decree," they are left to demonstrate that "declaratory relief was unavailable." Unfortunately for the plaintiffs, a failure to get one's desired decisions in our local courts does not constitute such "unavailability" and the suit must therefore be dismissed. See *Roth v. King*, 449 F.3d 1272, 1286-87 (D.C. Cir 2006) (holding Superior Court judges immune from suit for injunctive relief under § 1983 where judges were sued based on their decisions regarding CJA appointments), cert. denied, 127 S. Ct. 1357 (2007); see also *Hawkins v. Supreme Court of New Jersey*, No. 04-1317, 2005 WL 2133588 (D.N.J. Aug 31, 2005) (unreported) (holding state judges immune from § 1983 suit challenging allegedly discriminatory and prejudicial decisions rendered by and policies enforced by state judges), *aff'd*, 174 Fed, Aoox, 683 (3d Cir. 2006) (unpublished).

In addition, the Court declines to exercise its discretion and grant declaratory relief pursuant to 28 U.S.C. § 2201. Simply stated, neither the public

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[10] Plaintiffs clarified that the only money damages they seek are attorneys' fees from the judicial entities. (pls.' Supplemental Opp'n 8.) Since the Court is granting the motion to dismiss these defendants, it need not address this issue.

interest, nor the interests in practical judicial administration, would be served by a federal court reviewing the decisions of our local judicial officers who are acting pursuant to their judicial authority. See Johnson v. McCuskey, 72 Fed. Appx. 475, 477 (7th Cir. 2003) (unpublished) (declining declaratory relief where plaintiffs sought "declaration" that judges acted improperly in making previous decisions); Waris v. Frick, Nol. 06-5189, 2007 WL 954108 (E.D. Pa. Mar. 28, 2007) (permitting declaratory judgment claims to proceed against judges shielded from liability would not serve the public interest.).

Finally, naming the D.C. courts, and their components, as defendants does not save plaintiffs' claims because those entities are non *sui juris*. Although our Circuit Court has not as yet addressed whether the Superior Court can be sued in name, this Court adopts the reasoning of the other courts in this District that have held that the Superior Court, D.C. Court of Appeals, and their components are not proper defendants, and therefore must be dismissed. See Chisholm v. Superior Court of the District of Columbia, No. 06-2174, 2007 WL 1601718, *1 n.1 (D.D.C. June 4, 2007) (unreported) (noting that Congress did not authorize suit against either the Superior Court or the D.C. Court of Appeals). As such, this Court must dismiss all of plaintiffs' claims against the various judicial entities.[11]

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[11] The Court declines plaintiffs' invitation to permit them to amend the complaint and substitute the District as the defendant (Pls.' Opp'n 9), since to do so would be futile. "To impose liability on the District under 42 U.S.C. § 1983, [plaintiff] must show 'not only a violation of his rights under the Constitution or federal law, but also that the [District's] custom or policy caused the violation." See Fierson v. District of Columbia, 506

CONCLUSION

For the foregoing reasons, the Court GRANTS the defendants' motion to dismiss.[12] An Order consistent with this decision accompanies this Memorandum Opinion.

RICHARD J. LEON
United States District Judge

F.3d 36, 38 (D.C. Cir 2004)). Plaintiffs allege that the defendants are violating their rights "through [the] administrative and judicial practices, policies and customs of the courts" by virtue of the apparent refusal of the D.C. courts to reconsider their prior decisions and that these judicial policies are due, in part, to racial and ethnic animus (Am. Compl. ¶¶ 16-22, 163-68). Such bald assertions are insufficient to state a § 1983 claim. Accordingly, amendment would be futile.

[12] Defendants also filed a Motion to Strike the Amended Complaint. [Dkt. #6] Because the Court is dismissing the Amended Complaint in its entirety, it DENIES the motion to strike as moot.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

THANH VONG HOAI, *et al.*
Plaintiffs,

V

CIVIL ACTION .
1:06-cv- 00210-RJL

The SUPERIOR COURT of the
DISTRICT of COLUMBIA, *et al.*,
Defendants.

ORDER

Before the Court is Plaintiffs' Motion to Reconsider. Upon consideration of the pleadings, the relevant law, and the entire record herein, it is this 9th day of May, 2008 hereby

ORDERED that Plaintiff's Motion to Reconsider (Dkt. #43) is DENIED.

SO ORDERED.

RICHARD J. LEON
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

THANH VONG HOAI
2620 Poag Street,
Alexandria, Virginia 22303

and

CIVIL ACTION
NO. _____

JOHN D. HEMENWAY
4816 Rodman Street, NW
Washington, D.C. 20014

and

JURY TRIAL
DEMANDED

DAVID HEMENWAY
4813 Rodman Street, NW
Washington, D.C. 20014

Plaintiffs,

v.

The SUPERIOR COURT of the
DISTRICT of COLUMBIA
500 Indiana Avenue, NW
Washington, D. C 20001

and

The DISTRICT OF COLUMBIA
COURT OF APPEALS
500 Indiana Avenue, NW
Washington, D. C 20001

and

THE PANEL OF JUDGES
OF THE DISTRICT OF COLUMBIA
COURT OF APPEALS in their
official capacity as setters of case
management policy in their decisions
en banc and as three judge panels

and

THE BOARD OF JUDGES OF
THE DISTRICT OF COLUMBIA
500 Indiana Avenue, NW
Washington, D. C. 20001

and

ERIC T. WASHINGTON, Chief Judge,
District of Columbia Court of Appeals,
in his official capacity as
setter of judicial policy and practice
for the District of Columbia
Court of Appeals,

500 Indiana Avenue, NW
Washington, D. C 20001

and

HERBERT B. DIXON, JR.
Judge, Superior Court
of the District of Columbia,
in his official capacity as judge to whom
the case at issue is presently assigned,
500 Indiana Avenue, NW
Washington, D. C 20001

Defendants.

FIRST AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND FOR MONETARY DAMAGES, COSTS AND FEES
(Filed as a matter of right, no responsive pleading having been filed.)

I.

JURISDICTION

1. Plaintiffs bring this action pursuant to 42 U.S.C. § 1983 to vindicate rights secured by the First, Fifth and Seventh Amendments to the Constitution of the United States, and also upon 42 U.S.C. § 1981, and the common law and the law of the District of Columbia.

2. This Court has jurisdiction over the causes of action set forth in this complaint under 28 U.S.C. §§ 1331, 1337 and 1343 as well as 42 U.S.C. 1343 and 1341. Appropriate declaratory relief is authorized pursuant to 28 U.S.C. §§ 2201 and 2202. This Court has jurisdiction to enforce its own rulings, once made, when municipal courts refuse to apply them and make decisions in defiance of them. That is particularly so when, as here, a plan of litigation has been put in place under which claims will be split and certain claims tried first in this Court and then municipal courts such as the District of Columbia refuse not only to apply the rulings of this Court, but refuse to follow the plan to split the claims which the trial level municipal court imposed upon the case and refused to allow the claims that the litigants could be tried in the municipal court to be tried after the federal claims were split out and tried in the federal court.

3. This Court has venue over the causes of action herein under 28 U.S.C. § 1391.

II.

INTRODUCTION: D. C. COURTS SUED AS MUNICIPAL AGENCIES FOR POLICIES , PRACTICES AND CUSTOMS

4., The gravamen of the case pursuant to 42 U.S.C. § 1983 is the deprivation of the rights of these plaintiffs by the municipal courts of the municipality of the District of Columbia through administrative and judicial practices, policies and customs of the courts of the District of Columbia, which, even when pronounced by judges or judicial panels, are decisions of policy in the administration of cases rather than decisions of straight substantive law.

5. The relief sought is declaratory and injunctive in connection with litigation in the trial level court of the District of Columbia, the Superior Court, and as that litigation has been appealed on interlocutory appeal to the District of Columbia Court of Appeals.

6. Both of the said courts are agencies of the District of Columbia as a municipality for purposes of this action to the extent that it is brought pursuant to 42 U.S.C. § 1983. That is so as set out in decisions of this Court, beginning with such decisions as *O'Callaghan v. District of Columbia*, 241 F. Supp. 273 (D.D.C. 1990), *Best v. District of Columbia*, 743 F. Supp. 44 (D.D.C. 1990), and *Galloway v. The Superior Court of the District of Columbia*, 816 F. Supp. 12 (D.D.C. 1993) and decisions also of the United States Court of Appeals for this circuit such as *Daskalea v. District of Columbia*, 227 F.3d 433 (D.C. Cir. 2000), which decisions followed the decision of the U. S. Supreme Court in *Monell v.New*

York City Dept. of Social Services, 436 U.S. 658 (1978) as that case overturned the decision in *Monroe v. Pape*, 365 U.S. 167 (1961).

III.

THE OUTLINE OF THE OFFENSES CHARGED

7. In 1986, before the law alluded to above had emerged, the present plaintiffs became embroiled in litigation in the Superior Court of the District of Columbia, CA 7075-86, when they were sued in that court and eventually filed counter and third-party claims.

8. Within the past year, despite many efforts over many years by these plaintiffs to advance their defenses, and many efforts by these plaintiffs to have the 1986 suit filed against them dismissed as being without any basis and in violation of a settlement agreement, and, later, efforts by these plaintiffs to have this Court apply to that suit against them so that it must be dismissed, and despite the many efforts of these plaintiffs to advance their counter and third-party claims, a judge of the Superior Court, the defendant the Honorable Herbert B. Dixon, Jr., has threatened to dismiss their case without letting anything be ruled upon or heard, in direct violation of their rights of due process, their right to petition for the redress of their

grievances in the local court, and their right to a trial by jury.

9. This effort of the Superior Court judge to dismiss the claims and defenses of these plaintiffs altogether without allowing the merits of those claims and defenses to be reached is but one of a series of violations of the federal rights of these plaintiffs over a period of some twenty years, and also is part a pattern that has now emerged of racial bias in violation of 42 U.S.C. §1981 inasmuch as it has now become clear that these plaintiffs, an ethnic Vietnamese-American and two non-Vietnamese-Americans who came to his assistance when he was beleaguered, and were sued on false pretenses for doing so, will not be granted the rights to proceed in the courts of the District of Columbia to pursue their claims because, as opposed to granting rights to a non-Vietnamese entity embroiled in the case, whose claims and filings are acted upon with alacrity, these plaintiffs will have their names ignored because they basically involve justification of the rights of one Vietnamese against other Vietnamese.

10. These plaintiffs now sue in this Court to enjoin these violations of their federal rights and enjoin the municipal courts of the District of Columbia to allow their litigation to proceed, granting them due process, their right to proceed to redress their grievances, to have those issues where there is legitimate factual contention to be tried to a

jury and to cease the racial bias against a Vietnamese man and those helping him, namely the three plaintiffs herein, in obtaining the benefits of the justice system of the District of Columbia so that they too may have the benefits of the American system of justice just as litigants do who are neither Vietnamese nor aiding Vietnamese who seek justice.

IV.

A JUDGE OF THE SUPERIOR COURT IMPOSES A "CLAIM SPLITTING" PLAN UPON THE LITIGATION, BUT, AFTER THIS COURT PARTICIPATES IN THE PLAN, AND THESE PLAINTIFFS FOLLOW THE PLAN AS IMPOSED, THE SUPERIOR COURT REFUSES TO FOLLOW THE PLAN, VIOLATING THE RIGHTS OF THESE PLAINTIFFS IN DOING SO: INJUNCTIVE RELIEF SOUGHT

11. These plaintiffs allege, and it is central to their complaint, that the Superior Court, through the Superior Court judge, the Honorable Frederick H. Weisberg, imposed upon the case a plan under which the federal claims presented by these plaintiffs in their counter and third-party claims would be split, and these plaintiffs would try their federal claims in the federal courts, and in this one in particular, and then would return to the Superior Court and try the remainder of their claims there.

12. In accordance with this plan imposed by the Honorable Frederick H. Weisberg of the Superior Court, the litigation in the Superior Court was stayed. The plaintiffs brought two of their claims in this court. Another federal claim had been brought by one of the plaintiffs herein, Thanh Vong Hoai, in the United States District Court for the Eastern District of Virginia, Alexandria Division under RICO.

13. After these present plaintiffs concluded the two actions that were split out from their Superior Court claims, non-RICO claims, and brought in this Court, pursuant to the plan imposed upon the litigation by the Superior Court of the District of Columbia, however, and, upon the motion of these plaintiffs, the stay in the Superior Court was lifted. The Superior Court, in the person of the defendant the Honorable Herbert Dixon, Jr. then refused to apply the rulings of this Court as *res judicatea*. In doing so, the Superior Court of the District of Columbia refused to follow the plan that it had imposed upon the case, and, in direct contravention of the plan that it had induced these plaintiffs and this Court to follow and instead held that these plaintiffs had lost the claims that the plan called for these plaintiffs to return to the Superior Court and pursue by <u>not</u> bringing those claims in this Court. Thus the D.C. courts effectively misled these plaintiffs and, having induced this Court to follow the plan, ignored the findings of this Court.

14. These plaintiffs now seek to enforce the *res judicatae* of this Court's rulings and to have this court compel by injunction the cessation of this refusal by the D.C. municipal courts to impose the *res judicatae* of the rulings in this Court and to impose upon the Superior Court the plan of the subject litigation which the Superior Court itself through one of its own judges, imposed upon the subject litigation and make the Superior Court follow its own plan, this Court having already followed that plan and issued rulings which the Superior Court must now heed.

V.

ONE POLICY VIOLATING THE RIGHTS OF THESE PLAINTIFFS

15. Among the policies of the D. C. courts violating the federal rights of these plaintiffs is a policy that dramatically changed from one not violative of the rights of litigants to one violating the rights of litigants *per se*.

16. In 1910, Mr. Justice Oliver Wendell Holmes, writing for the Supreme Court of the United States, in the case of *King v. West Virginia,* 216 U.S. 92, 100, 101, 30 S. Ct. 225, 54 L. Ed. 396, pointed out that what is known law of the case is a "practice of the courts" and that it is determined in each state by the highest court of that state. In 1912, two years

later, he repeated this finding in *Messinger v. Anderson*, 225 U.S. 436, 444, 32 S. Ct. 739, 56 L. Ed. 1152, In both cases he also cited a number of earlier Supreme Court cases for this proposition.

17. This holding, that law of the case is a practice of the courts, not a limit upon their power, and thus a matter of policy to be set by the highest court of a jurisdiction, was specifically recognized in the District of Columbia in cases. See *Morse v. Morse*, 213 A.2d 581, 583 (D.C. 1965), and the old case of *Davis v. Davis*, 96 F.2d 512, 68 U.S.App.D.C. 240, 243 (D.C. Cir. 1938).

18. The court has power, under some circumstances, to disregard a prior decision, although it should not be exercised, except in a clear case (*Williams v. Order of Commercial Travelers*, 6 Cir., 41 F.2d 745), where the earlier adjudication was plainly wrong (*Seagraves v. Wallace*, 5 Cir., 69 F.2d 163, 165; *Rogers v. Chicago, R. I. & P. Ry.*, 8 Cir., 39 F.2d 601, 604), and where the application of the "law of the case" rule would work manifest injustice. *Zurich General Accident & Liability Ins. Co. v. O'Keefe,* 8 Cir. 64 F.2d 768, 770; *Johnson v. Cadillac Motor Car Co.*, 2 Cir., 261 F. 878, 886, 8 A.L.R. 1023. Cf. *United States v. Moser*, 266 U.S. 236, 242, 45 S. Ct. 66, 67, 69 L. Ed. 262. The D. C. municipal courts recognized that the weight of authority, which D. C. followed, was that law of the case did not rule where

decisions are clearly wrong or where they work a manifest injustice.

19. The courts of the District turned 180 degrees away from this policy and that change in judicial policy had a direct and detrimental effect upon these plaintiffs, leading to the violation of their federal rights of due process, their right to petition for the redress of their grievances in the courts, their right to have issues tried to a jury, and, ultimately to the exercise of bias against them because the present plaintiff Hoai was a Vietnamese seeking justice against other Vietnamese, a would-be ethnic mafia, who had badly wronged him and who wronged the other two present plaintiffs because they sought to help him in his travails.

20. This change in judicial policy began with cases by the defendant D. C. Court of Appeals such as *Kritsidimis v. Sheskin*, 411 A. 2d 370 (D.C. 1980) and by the time of the litigation in question had hardened into a different policy. Under this new policy the doctrine of vacating or reversing decisions that worked a manifest injustice was dropped altogether. Further, the concept of vacating or undoing decisions that were clearly wrong was modified into a position that decisions would only be undone if they were clearly wrong in light of newly presented evidence or intervening changes in substantive law.

21. Thus the official policy of the D. C. Courts had become a policy that a judge can do no wrong and cannot possibly have worked a manifest justice.

22. In the present case the very first actions by judges resulting in orders were clearly wrong and worked a manifest injustice.

23. The course of the litigation since has in many ways been a dramatic carrying out of this flawed policy which, by its very absolutist nature, leads to the violation of federal rights, as it did here.

24. This last flawed policy particularly violated the rights of these plaintiffs as it interacted with, in this case, the refusal of the D. C. judges to compel any adherence to the plan of the case whereby the claims of these plaintiffs in the case were split between the D. C. courts and this Court so that the defendants protected themselves against correcting clearly wrong actions by D. C. judges by violating that plan after this Court had issued rulings that made clear how clearly wrong those actions were and thus the D. C. courts chose not to correct manifest injustice that had been worked by those clearly wrong decisions, something the said courts would have been required to do had they applied the rulings in this Court.

VI.

SOME FACTUAL BACKGROUND

25. The present plaintiffs are an American of Vietnamese ethnicity and racial origin and two Caucasian Americans who tried to assist him when his valuable service station franchise in the District of Columbia was taken over by a group of other Vietnamese who told him that they aspired to be like the Mafia and who used mafia-style tactics, as they perceived them, in taking over the service station franchise through threats, deceit and intimidation, including threats of death,

26. This was part of the scheme of this would-be ethnic mafia in which they also lured the Vietnamese present plaintiff Thanh Vong Hoai into sinking his capital into a food stall business and then took over that enterprise with threats of violence, seizing its inventory. The plaintiff Hoai's investment was, for him, considerable capital.

27. While luring the plaintiff Hoai's capital into the food stall business, these same individuals induced him to accept a sham loan for the start up of the service station franchise with Sunoco. The loan never existed, but the false representation that it did enabled one of their ringleaders of the Vietnamese ethnic would-be mafia, one Thanh Van Vo, to work his way into physical control of the Sunoco station and franchise on Pennsylvania Avenue, SE, in the

District of Columbia by a combination of false representations and threats of murder and physical violence, threats that were first hidden from Sun but then became known to its officials.

28. The nature of this mafia style activity as it became evident is what made the flawed early decisions in the Superior Court so manifestly unjust and clearly wrong. Their true nature was alleged from the outset by these plaintiffs in the Superior Court proceedings and yet by their flawed decisions judges of the Superior Court sided repeatedly with this would-be mafia. These decisions were not only flawed, but outside the role of judges altogether in certain respects. Then those decisions were repeatedly protected by further flawed decisions.

29. Thanh Van Vo and the other members of this would-be Vietnamese ethnic mafia that was oppressing the present plaintiff Thanh Vong Hoai ultimately became counter and third-party defendants in the Superior Court of the District of Columbia case in question, when, with Thanh Van Vo as one of the ringleaders, the would-be ethnic mafia pursued this scheme to take over the two businesses from the plaintiff Thanh Vong Hoai through a pattern of events which included threats of violence, even death, and a classic "mafia-style" "one dollar contract" forced upon the plaintiff Hoai by the intimidation and threats against Hoai and his family.

30. By this "one dollar contract," Vo purported to buy the station and franchise, doing so in violation of the local Retail Service Station Act, (RSSA) and the franchise agreement between Hoai and Sun Refining & Marketing (Sun) as entered into under the Federal Petroleum Marketing Practices Act., (PMPA). The actual laws by which Sun, at the time siding with its dealer, refused to accept Vo as a potential transferee of the franchise, were paid no attention to by the aspiring ethnic mafiosi when the would-be ethnic mafia took over the station by their mob tactics. Their ignoring of these controlling laws was later adopted as a policy by the Superior Court of the District of Columbia and its judges.

31. During this time, Sunoco through its representatives, rejected all attempts by Thanh Van Vo to become a transferee of the franchise.

32. The defendant courts and their judges, by the practices, policies and customs complained of in this suit, blessed and sanctioned this ignoring of the laws and also ignored the laws until the present plaintiff Hoai, at the instance of the Superior Court judge, the Honorable Frederick H. Weisberg, came to this Court and successfully pursued a claim here under the federal Petroleum Marketing Practices Act (PMPA) 15 U.S.C. § 1601 *et seq.* But even after the law had been made clear in this Court and the United States Court of Appeals for this circuit, the

defendant courts of the District of Columbia have refused to apply the law and have not changed their course. Now they seek to dump the case in order not to have to apply the law as ruled by this Court and set out in statutes or enabled by statutes and contract law.

VII.

THE PARTIES

33. The plaintiff Thanh Vong Hoai is a resident of Northern Virginia who, at the times pertinent to the litigation at issue in the Superior Court of the District of Columbia and the Court of Appeals of the District of Columbia owned and operated a Sunoco franchise on Pennsylvania Avenue, SE, in the District of Columbia. Simultaneously, he operated, and was fraudulently led to believe that he was purchasing, an ethnic food business in Arlington County, Virginia.. In the case at issue in the D. C. courts, he was sued and then became a counter-plaintiff and third-party plaintiff in addition to being a defendant.

34. The plaintiff John D. Hemenway is a resident of the District of Columbia and member of its bar who attempted to assist the plaintiff Thanh Vong Hoai in protecting his business enterprises: the gas station franchise in the District of Columbia and

the food business located in Arlington, Virginia, when the third party defendants other than Sunoco initially attempted to take them away from the plaintiff Hoai. In the case at issue in the D. C. courts, he was sued and then became a counter-plaintiff and third-party plaintiff as well as a defendant.

35. The plaintiff David Hemenway is a resident of the District of Columbia who attempted to assist the plaintiff Thanh Vong Hoai in protecting his business enterprises: the gas station franchise in the District of Columbia and the food business located in Arlington, Virginia, when the third party defendants other than Sunoco initially attempted to take them away from the plaintiff Hoai. In the case at issue in the D. C. courts, he was sued and then became a counter-plaintiff and third-party plaintiff as well as a defendant.

36. The defendant the Honorable Herbert B. Dixon, Jr., ("Judge Dixon") is a judge of the Superior Court of the District of Columbia, the municipal court in which the case at issue is presently pending and is the judge to whom the case is presently assigned.

1. The defendant Superior Court is the trial level court of the District of Columbia, and as such is the court of a municipality under the decisions of the courts.

38. The defendant District of Columbia Court of Appeals is the appellate court of the District of Columbia as a municipality for purposes of the statutes sued under.

39. The defendant Board of Judges of the District of Columbia consists of the Chief Judge and all the Associate Judges of the District of Columbia Superior Court. They are responsible for policies and practices of the Superior Court and for seeing that they are carried out and observed.

40. The defendant Eric T. Washington is the Chief Judge of the District of Columbia Court of Appeals and, as such, in his official capacity, in which capacity he is sued, can decide upon and influence judicial policy such as that which is involved in litigation plans that allow claim splitting and their enforcement and in case management policy where there is application of law of the case doctrine or discriminatory treatment based on race or national origin or other such discretionary matters of judicial policy as opposed to application of the law as such.

41. The defendant Panel of judges of the District of Columbia Court of Appeals is the body of judges of that Court addressed in their official capacity as they make decisions, particularly those

Supreme Court, U.S.
FILED
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Docket No. 09-843

In The
SUPREME COURT OF THE UNITED STATES

THANH VONG HOAI, et al.,
Petitioners

v.

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA, et al.
Respondents.

On Petition for Writ of Certiorari To The United States Court Of Appeals For The District Of Columbia Circuit

APPENDIX
VOLUME II

Thanh Vong Hoai, *pro se*
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John D. Hemenway, *pro se*
David Hemenway, *pro se*
4816 Rodman Street, NW
Washington DC 20016
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decisions that are not legal decisions as such but decisions about case treatment and management.

42. For purposes of the Federal Civil Rights Statutes at issue here the defendant courts and court officers are courts and officers of a municipal government, that of the District of Columbia, a body duly constituted pursuant to the Constitution and acts of Congress.

VIII.

HOW THE LITIGATION IN THE D. C. COURTS STARTED

43. After the would-be ethnic mafia took Hoai's station away from him by their mob-style tactics he retained a Vietnamese lawyer who agreed to meet with Hoai and the Sunoco area representative, Ernie Peele, but failed to show up for the meeting. On information and belief the plaintiff Hoai believes that that lawyer was intimidated by the group that had taken over Hoai's businesses.

44. Hoai then retained another Vietnamese lawyer, My-Linh Soland, who purported to be helping him but made matters worse by, among other things, promising to file in court and not doing so, and telling him to stay out of the station for fear of his

safety when Sun was telling him he had to get back into the station in order to retain his franchise.

45. Hoai found out that the lawyer My-Linh Soland in fact had long done work for two of the would-be Vietnamese mafia that were oppressing him, Minh and Luu.

46. While in these straits the plaintiff Hoai happened to meet the plaintiff David Hemenway when when Hoai's car had broken down by the side of the road and David Hemenway stopped to offer assistance..

47. David Hemenway in turn introduced the plaintiff Hoai to his father, the plaintiff John D. Hemenway, a member of the D. C. bar. David Hemenway asked John Hemenway if he could help Hoai in his distress.

48. John D. Hemenway met with the plaintiff Hoai and the Sunoco Area Representative, Ernie Peele, who confirmed that Hoai was Sunoco's dealer and needed to get back into the station to save his franchise and operate it.

49. Ernie Peele signed, as Sunoco Area Representative, a Notice to Surrender the Premises which John D. Hemenway drew up on behalf of the present plaintiff Hoai so that they could go to the station and see if those illegally occupying it would

surrender peacefully without being taken to court. The notice, signed by Peele, asserted that Hoai was the only legitimate franchisee of the station and its rightful occupant.

50. On August 25, 1986, the two Hemenways and Haoi went to the station on Pennsylvania Avenue, SE, in the District of Columbia, and presented the Notice to Surrender and showed those who were there that it was signed by Peele, attested that Hoai was the legitimate franchisee and occupant of the station.

51. Thanh Van Vo was not there A heavyset man who they later learned was a cousin of Vo's, Phuly Vo, was in the station with other Vietnamese and seemed to be in charge. Later they learned that Vo was in Toronto, Canada, at the time.

52. Phuly Vo threatened these plaintiffs that he would call the police. These plaintiffs encouraged him to do so and he did. The police came and witnessed the rest of what happened.

53. The police who came talked to John Hemenway and told him that he would have to go to court to formally evict those who were there.

54. John Hemenway acknowledged that he knew that but he wanted the police to witness what

happened if he just asked those there peacefully to leave, asserting what was in the notice.

55. With the police as witnesses, present plaintiff John D. Hemenway presented his notice, informed all who would listen what was in the notice and asked them to leave.

56. All the Vietnamese who had been hired by Vo left, some requesting and being allowed to take their possessions, including in some cases tools and in one case an automobile.

57. They left without putting up any opposition or argument.after the initial protestation by Phuly Vo. The present plaintiffs cordoned off the station and began to prepare it to reopen under its restored proper franchisee's management.

58. Early the following morning of August 26, 1986, the present plaintiffs Thanh Vong Hoai and David Hemenway were in the station. At that time Thanh Van Vo (Vo), having hurriedly returned from Toronto, Canada, led a gang of eight or more Vietnamese which reentered the premises in a threatening manner, with one gang member brandishing a knife.

59. The present plaintiffs Hoai and David Hemenway were forced, for fear of their lives, into retreating into the station building, locking it, and

then the gang began to break into the building to get at plaintiffs Hoai and David Hemenway. From inside Hoai and David Hemenway could hear members of the assaulting gang trying to break into the building through the roof and through the rear.

60. David Hemenway called the 911 emergency police number, stating to the dispatcher that he and Hoai were under attack, and the police responded.

61. The present plaintiff John D. Hemenway came to the station as did other parties on the side of Vo, including the lawyer for the would-be ethnic mafia, Michael Arif. The confrontation de-escalated from one of physical assault to one of verbal confrontation.

62. In that verbal ensuing confrontation involving additional parties from both sides it was agreed that the parties would meet the following day at the station in the presence of Ernie Peele, the Sun Area Representative, and abide by his decision as to who was the legitimate franchisee and occupant of the Sunoco station on Pennsylvania Avenue, SE in the District of Columbia.

63. The parties met on the following day, August 27, 1986, as agreed. Earnest Peele, the Sunoco Area Representative, informed all who were present that Hoai, a plaintiff here, was Sun's dealer

and the legitimate occupant of the station and owner of the franchise.

64. John D. Hemenway openly tape recorded this encounter as he had portions of the encounter on the preceding day, once it had de-escalated.

65. The would-be Vietnamese mafiosi, with their lawyer present, appeared to abide by the decision made by Ernie Peele and left the station except for their lawyer, Michael Arif, who purported to be taking an inventory of the goods and items purchased by Vo while he was in illegal control of the station for purposes of crediting him with the expenditures on those goods and items.

66. Michael Arif was desultory in taking this inventory and after a while he claimed that some money was missing from a desk, declared that he had to go to a meeting, and left. What happened next made it clear that this inventory was a mere pretext and the missing money charge a fabrication.

67. For, as Michael Arif was purporting to be abiding by the agreement between the parties by taking the inventory, the ringleader Vo then went out and got other lawyers. Within a day, Vo launched a pre-emptive strike lawsuit in the Superior Court against the plaintiffs herein, charging them with a number of fabricated common

law offenses, such as assault, in effect accusing plaintiffs of the sort of behavior that Vo and his gang had engaged in.

68. Vo sued in that case along with a second plaintiff, Suntech, Inc., a company he had formed when he illegally took over physical control of the gas station franchise.

69. The complaint made no mention of, and avoided, the statutes and the law that govern service station franchises and unfulfilled conditions precedent to any transfer such as were clearly set out in the franchise contract between Hoai and Sun as enabled by the PMPA and are contained in the District of Columbia Retail Service Station Act (RSSA).

70. This was so even though that franchise agreement between Sun and Hoai containing the precedent conditions was attached to the Vo/Suntech complaint.

71. This complaint was drafted as if the PMPA, the RSSA, and the franchise agreement and their lawful requirements for the fulfillment of the precedent conditions requiring written notice and an opportunity for the franchisor to vet the proposed transferee did not exist. Nor did the Complaint take cognizance of the RSSA provision forbidding such suits against a franchisor.

72. In essence the complaint asked the defendant Superior Court to enforce that which the law itself forbids. The Complaint was originally filed August 28, 1986.

IX.

THE INVALIDITY OF THE VO COMPLAINT

73. Although the complaint as filed by Vo and his company contained no request for injunctive relief, nonetheless, he and his company filed a motion for a Temporary Restraining Order when they filed their original complaint in the D. C. Superior Court.

74. This suit was against the three present plaintiffs and also against Sunoco.

75. Almost every charge in the original complaint is barred as a matter of law.

76. None of the charges against Sunoco in the complaint can be brought in the face of the RSSA bar against proposed transferees of a franchise who are rejected by the franchisor suing the franchisor.

77. Similarly practically all of the counts against these three plaintiffs are unsustainable. They assume that the franchise belonged to Vo, and

thus incorporate and depend upon charges that are unsustainable because the complaint incorporates the franchise agreement between Hoai and Sunoco, whose precedent conditions, which are specifically allowed by the PMPA were clearly not met in that Sunoco specifically disapproved Vo as a transferee or owner of the franchise. The complaint sought to have the Superior Court compel Sun and the plaintiff Hoai to do that which they correctly and lawfully did not do.

78. Their theories were such things as breach of the one dollar extortionate contract, civil trespass, conversion, lost profits, and tortious interference with a business contract. At that time they sued not only the three plaintiffs in this litigation but also Sun as having allegedly participated in these enumerated torts, all of which assumed Vo owned the franchise, which, as already alleged, was impossible as a matter of law.

79. The charges against John D. Hemenway for theft are based upon the pretextual assertion of the attorney Arif that money was missing made during the pretextual inventory, and are thus based upon the unsupportable notion that an accusation that something is missing in a situation where a person has been one of a number in the premises is a viable charge.

80. The charge of assault against the present plaintiff David Hemenway is ludicrous. It is based upon David Hemenway's having ostensibly brandished an iron bar when he and Hoai, had locked themselves inside the station building, and were greatly outnumbered by a mob, led by Vo. Yet, it was the plaintiff Vo making this ludicrous charge, who was trying to break into the building to do them harm, with one of the assailants flashing a knife. The bar was brandished from within the locked building that was under assault.

81. The complaint does not make any allegation of the tort of wrongful eviction and if it had would have been subject on that count to the same infirmity outlined above as violative of controlling statutory law, the franchise agreement under the PMPA, and of the franchise being Hoai's as later found by this Court as well as other infirmities.

82. Moreover, the complaint was brought in direct violation of the settlement agreement between the parties to abide by the word of Ernie Peele as to who was the legitimate owner of the franchise and occupant of the station.

X.

THE TRO HEARING AND THE INITIAL CLEARLY WRONG DECISION, ONE WHICH WORKED A MANIFEST INJUSTICE

83. The TRO hearing as it first proceeded on the day of the filing of the complaint by Vo and his company, August 28, 1986, was a day in which the hearing was largely taken up by the TRO judge's disqualifying John D. Hemenway as attorney for the parties sued on the basis of the pretextual charges against him in the complaint. Another attorney, D. Curtis Danielson, was finally obtained to represent the defendants but had not been at the hearing very long when the judge, the Honorable Annice M. Wagner, then an associate judge of the Superior Court, stopped the hearing and adjourned matters to the following day.

84. The judge informed the parties that she had to go to a hairdresser's appointment, and that such appointments are difficult to get. The attorney D. Curtis Danielson informed the court that he could not appear the next day because of a schedule conflict.

85. Overnight the defendants obtained new counsel and the following day, when the TRO hearing resumed, as a matter of record, were represented by the present counsel for the three present plaintiffs. Sunoco, subsequently, defected from its dealer Hoai, and made an agreement with the would-be mafia ringleader Vo to give him the franchise, as is set out more particularly below. In the meantime the TRO hearing continued with the

three present plaintiffs and Sun as defendants against whom the TRO was sought.

86. When the TRO hearing resumed at 9:30 AM on August 29, 1986, the judge stepped outside of her judicial role and function and decided to act as a prosecutor and advocate against these plaintiffs and Sun as the then named defendants in the lawsuit in question, introducing into the cause a tort not pled by the plaintiffs and insisting that these defendants and Sun be tried for it.

87. She thus stepped outside her common law immunity and privilege as it protects her personally against violations of 42 U.S.C. § 1983 and acted where she had no jurisdiction at all, as opposed to arguably making a questionable judgment where she did have some basic jurisdiction.

88. It happened like this:

89. The attorneys for Vo and Suntech presenting the case for the TRO had scarcely gotten out a few sentences of their case when the judge, the Honorable Judge Annice M. Wagner, interrupted and made it clear that she did not care about the torts that were pled; she wanted these plaintiffs and Sun, as the defendants at that point, prosecuted for the tort of "wrongful eviction." This was a tort that had not been pled and was thus not in the complaint which the TRO was in support of.

90. Thus the judge stepped outside the role of jurist and took on the role of prosecutor and advocate in complete violation of the rights of these defendants, which she trampled upon egregiously.

91. In doing this the Honorable Judge Annice M. Wagner ignored completely the laws governing gas station franchises in the District of Columbia such as the PMPA (as noted in this Court in the later PMPA case won by Hoai.) and the District of Columbia Retail Service Station Act (RSSA), both of which enable or, in the latter case, statutorily mandate waiting periods before such transfers of service station franchises in order that the franchisor (Sun here) may check the background and experience as well as the credit and financial status of the proposed transferee.

92. Thanh Van Vo had no background and experience as an operator of service stations and did not even know how to check the oil in a car. He had been examined and vetted by Sun and rejected as a potential transferee of the franchise.

93. Thanh Van Vo had no credit and financial strength. In fact he and his colleague Thach were running a scam in which Thach falsely claimed to be president of a bank. They falsely claimed to be lending the plaintiff Hoai $35,000.00 by putting it in an account for the station. In fact they "salted" the

account with a very small amount of money, then forbade the plaintiff Hoai access to it. They then put the proceeds of the station into the account, while writing bad checks on the account, including to the Superior Court for the TRO bond and to Sun for gasoline deliveries.

94. Nonetheless, all of this was ignored by the TRO judge in order that she might act as a prosecutor and advocate, and insert into the case and prosecute her concept of "wrongful eviction" which she knew of from her days in private practice as a "People's Counsel" enforcing tenants' rights.

95. This was not a landlord and tenant situation and hence, even by D.C. law the concept of wrongful eviction did not apply for many other reasons, such as that Vo was an intruding scrambler in Prosser's phrase. He had no occupancy rights; he was trying to get the Superior Court to give him such rights in the face of clear, contractual and legal barriers against them. These defendants had no paramount title over Vo and he a subordinate title. Sun was not his landlord.

96. During the hearing there was testimony from Ernie Peele, Sun Area Representative, about the failure to meet precedent conditions by Vo and the talk by Vo and his would-be Vietnamese mafia colleagues about "breaking legs" of Hoai. The TRO judge ignored these things, refused to consider the

actual facts of the case or the controlling law and found the equities to be for the would-be Vietnamese mafias. In fact she made no effort at all to consider the harm that would come to the plaintiff Hoai from her decision to deprive him of his gas station franchise based on her emotional decision to become a prosecutor in the cause.

97. This was as clear a case of a decision that was clearly wrong and worked a manifest injustice as could be found. A judge of the Superior Court knowingly chose to side with a would-be ethnic mafia against the legitimate owner of a major oil company franchise, against that oil company, and against two individuals who merely sought to assist that Vietnamese franchisee against the would-be ethnic mafia that was oppressing him and one of its ringleaders, Vo.

98. Since the TRO, all the energies of the defendant courts have been devoted to seeing that this clearly wrong and manifestly unjust decision is never examined so that the law may be applied to correct it and to prevent it from in any way being found to have been wrong, even when this Court had made rulings, as it subsequently did, that made it clear that this decision was wrong as a matter of *res judicatae*. Still the judges of the D. C. courts applied their policy that no clearly wrong decision can be corrected, that even when, as here, a decision works

such manifest injustice that it shows a judge giving aid and comfort to a would-be ethnic mafia

XI.

ASSURING NO HEARING

101. Rule 65 of the District of Columbia Rules of Civil Procedure is copied from Rule 65 of the Federal Rules of Civil Procedure and the case law under the Federal Rule applies to its Superior Court counterpart.

102. The language of the TRO issued by the Honorable Annice M. Wagner in the Superior Court in the subject case is in accord with due process in the normal practice under Rule 65 inasmuch as it states that the TRO will expire in ten days.

103. During the TRO hearing the Honorable Annice M. Wagner assured these plaintiffs, and the plaintiff Hoai in particular, that there would be a full preliminary injunction hearing within days.

104. The TRO judge then changed her mind and suddenly decided that there would not be a preliminary injunction hearing, giving as her reason that the plaintiffs in that case, Vo and his company, had requested no injunctive relief in their complaint.

105. Thus, what was a fault by the plaintiffs in that case was used to deprive the present plaintiffs, as defendants in that case, of normal due process in violation of the TRO itself, furthering the manifest injustice of the actions of the judge.

106. The judges of the Superior Court then took further steps under their practices, policies and customs in that court to assure that these plaintiffs would have their rights violated and never reach the merits of their claims and defenses, depriving them of due process, the right to proceed to redress their grievances, to have their issues tried by jury, and ultimately assured that justice would be denied to a mere Vietnamese-American and those seeking to assist him.

107. The defendant courts and those operating them made sure that there would be no hearing and, next, that there would be no security for these plaintiffs and thus that they would be deprived of their property and rights without just compensation.

XII.

A FURTHER PRACTICE DEPRIVING THESE PLAINTIFFS OF THEIR FEDERAL RIGHTS AND A FURTHER REFUSAL TO ADDRESS AND CORRECT

108. In the TRO Order issued by the Honorable Annice M. Wagner at the end of the TRO hearing on August 29, 1986, a bond was set as a precedent condition for the TRO to go into effect as may be seen in the Order.

109. The bond was set at $3,000.00, a completely inadequate amount for a major oil company gas station franchise as a matter of which this Court may take notice. It was to be paid in cash by the terms of the TRO.

110. No cash was ever paid, nor even an attorney's check, as promised at the end of the TRO hearing by counsel for those plaintiffs seeking the TRO.

111. Instead the plaintiff Vo issued a check backed by insufficient funds on the account of the service station franchise that he had set up when he illegally took over the station from the present plaintiff Hoai by mob-style tactics.

112. The bond was to be paid that day. It was not in fact paid for that day or even the following business day. In fact it was not actually paid for weeks.

113. This account upon which this check for the bond was written was the account into which he, the Superior Court plaintiff Vo, had falsely

represented that the had put the capital "loan" to Hoai of anywhere from $35,000.00 to $50,000.00; in fact he had deposited, as the bank records show, only a few hundred dollars.

114. Weeks later, the court notified the plaintiff Vo that his check had been returned for insufficient funds.

115. Subsequent attempts by the present plaintiffs to inform the D. C. municipal judges that the TRO had never come into being because this precedent condition had not been fulfilled, and to have the court declare the TRO to have never come into being for failure to fulfill the precedent condition, were ignored and never acted upon.

116. Ultimately, after the plaintiff Vo simply disappeared for many months, these plaintiffs asked that he be required to show cause why his case against them should not be dismissed or ruled upon as inadequate. During that period, Vo's counsel had been allowed to withdraw because he had not been paid the plaintiff Vo. Vo reappeared up and his counsel was allowed to represent him further, by the court's having the bond paid to Vo's for counsel fees, without any notice to these plaintiffs. These plaintiffs' objections to paying Vo's counsel from the bond, and the reappearance of that counsel, were ignored.

117. Thus, this error and mistake became part of which, though clearly wrong and manifestly unjust, the defendants to this day refuse to correct.

118. The defendant Superior Court, its panel of judges, and the defendant Court of Appeals, with it supervisory responsibilities, have all been extremely negligent in never providing any remedy in Rules or in their practice for allowing those affected as defendants by the failure of plaintiffs who seek TRO's to meet the precedent condition of filing bonds within the time specified with legitimate payment. The result, is to continually deprive defendants of any security as contemplated by the law and the Rules and, ultimately, as here, to deprive or contribute to depriving defendants of property and rights without due process of law.

119. The practice by the offices of the defendant Superior Court of not requiring proper meeting of the precedent condition of timely filing bonds in proper form, as all those who practice in the Superior Court know and have experienced, is common as an examination of the records requiring the posting of the bonds over the years will show.

120. Judges who issue TRO's, when notified of such failure to meet the precedent condition of timely and properly filing bonds, routinely practice a policy of ignoring or excusing such failures.

121. These policies, practices, and customs were particularly harmful in the subject case because of what happened next when, in a further violation of the rights of these plaintiffs, the TRO was made *de facto*, into a permanent injunction without any notice to them, again in gross violation of their federal rights.

XIII.

A FURTHER VIOLATION OF FEDERAL RIGHTS MAKES THE TRO PERMANENT

122. By its terms, and also according to the Civil Rules of the defendant Superior Court, which are copied from the Federal Rules, (including, in that copying, Rule 65,) the TRO was to expire in 10 days.

123. The Honorable Annice M. Wagner, during the TRO hearing, explained from the bench to the present plaintiff Hoai, there a defendant, that he would have a chance to present his case at a preliminary injunction hearing in just a few days.

124. However, the Honorable Annice M. Wagner, decided, as the TRO hearing was ending, (during the TRO hearing these plaintiffs had pointed out that Vo, as the plaintiff in that proceeding, had not requested any injunctive relief,) to not set a preliminary injunction hearing, despite her previous assurances that she would set such a hearing. She

did this despite the mandate of Rule 65, for the irrational reason, as she gave it, that the plaintiffs Vo and his company had not sought any injunctive relief in their complaint.

125. In the meantime, as set out in the preceding subsection, the plaintiffs Vo and his company had not met the precedent condition of posting a bond in cash within the allotted time, or even with a valid and good counsel's check within the allotted time. Instead Vo used a check drawn on the account of the franchise that he had illegally taken over, the same account in which he claimed falsely to have deposited the "loan" that never existed.

126. As previously alleged also, by virtue of the Retail Service Station Act (RSSA) as in effect in the District of Columbia, Vo was specifically forbidden, as a disappointed proposed transferee of the franchise, from suing Sunoco. See RSSA, D.C. Code § 10-226(b).

127. All Sunoco had to do was to move to have itself dismissed, citing the RSSA, and even the Superior Court, having set itself in favor of Vo and the would-be Vietnamese mafia at that point, would have had no choice but to dismiss Sunoco from the case. Further, the Federal PMPA specifically allows a franchisor such as Sun to impose the conditions precedent regarding transfer of one of its franchises in its franchise agreements, as it did in its franchise

agreement with Hoai, conditions precedent that, as here, are in concordance with local law. Sun had an absolute right to impose, as it did, precedent conditions of a time delay in which it had the right to vet any proposed transferee and reject that transferee on rational grounds, as it did with Vo. The Superior Court had no jurisdiction to entertain the suit by Vo against Sun as it did, the case being dismissible on its face.

128. As it turned out, even when it later did get dismissed from the case as a defendant because it switched sides and gave the franchise to Vo, Sunoco, despite being a major oil company, did not cite the RSSA, never mentioned it and instead cited the fact that it had switched sides and joined with what it knew was a would-be Vietnamese mafia as grounds for its dismissal, confirming its knowing collusion with thugs who were terrorizing its own dealer and franchisee.

129. Further, Sun could have, in conjunction with the present plaintiff Hoai, invoked the precedent conditions in its actual franchise agreement with Hoai and simply pointed out that those conditions had not been met, and that it had vetted the plaintiff Vo and found him wanting with complete justification.

130. The Federal Petroleum Marketing Practices Act specifically allows such precedent

conditions in franchise agreements, particularly where, as they do here, they comport with local statutory law governing service station franchises. 15 U.S.C. § 2806(b).

131. Instead of simply moving itself out of the case pursuant to the RSSA or its franchise agreement's terms as allowed and enabled by the PMPA, Sun chose to use and invoke a Rule of the Superior Court and its practices and procedures to switch sides, abandon its dealer, and give the franchise to the intruder Vo, an utterly needless act that was later found by this Court to be an illegal termination of the present plaintiff Hoai's franchise in violation of the PMPA.

132. This action has cost Sunoco needlessly hundreds of thousands of dollars to date, in a judgment against it, a fee judgment against it under the PMPA and payments to its own counsel for years of needless litigation. The bulk of the damages inflicted upon these plaintiffs as a result of this illegal act are still pending and unresolved. If the law is obeyed and the defendants are enjoined to observe the rights of these plaintiffs.

133. In 1986, when Vo and his company Suntech launched their pre-emptive strike law suit in the defendant Superior Court of the District of Columbia in violation of their settlement agreement to abide by the word of Ernie Peele as to who was the

dealer and franchisee owning the Sun franchise on Pennsylvania Avenue, SE, the defendant Superior Court had a Rule called the Judge-in-Chambers Rule, Rule 12-I(b).

134. This Rule as it then stood gave the Judge-in-Chambers, as appointed by the Chief Judge of the Superior Court, unfettered power to decide which parties in a litigation would be required to appear and be notified in a particular litigation to enter an order.

135. While the Rule as then in effect specified a list of particular decisions which the Judge-in-Chambers might make it also contained a broad and boundless provision that the Judge-in-Chambers might consider and decide upon "any and all matters appropriate for such disposition." It did not provide any standard for deciding what might be appropriate for such disposition.

136. In particular the Rule did not provide for notice to all parties and their counsel in such situations as obtained in the subject case and was thus negligent in its construction on its face and an invitation to abuse of such matters as the requirement for due process imposed upon the institutions of the District of Columbia under the Fifth Amendment to the Constitution of the United States.

137. Under this Rule, and the practice and procedure under it in the Superior Court, any two or more parties to multi-party litigation could go to the Judge-in-Chambers without notifying any of the other parties to the controversy and agree among themselves how to dispose of property in controversy.

138. That is what Vo and Sun did in this instance in 1986 as the end of ten days after the TRO had been issued approached, at which point, even had the TRO been legitimate with the bond paid as required, it would have expired by its own terms and the Rule.

139. On its face this Rule and the practice and procedure under it violated the due process rights of these plaintiffs under the Fifth Amendment by allowing the taking of the service station franchise property from Hoai without notice to the parties affected, and with regard to all of these plaintiffs by depriving them *per se* of their rights of due process in the litigation

140. It was completely negligent of the Superior Court to have such a rule and to allow such deprivations under it by the use of its blatant lack of proper requirements and protection for all parties.

141. By 1990 the Superior Court changed the rule to make it apply only to specific items and situations and by eliminating the wide open

language quoted and referred to above, but it was too late for these plaintiffs. The change in the Rule did acknowledge and show that the Rule was defective as alleged.

142. In the subject case, without even notifying the other parties to the litigation, the parties Vo and Sun, enabled by the defective and violative Rule, could and did make a private agreement whereby Sun handed the franchise that was Hoai's over to the intruder Vo

143. Because of this defective and violative Rule a judge of the defendant Superior Court, the Honorable Judge Stephen F. Eilperin, acting as Judge in Chambers, signed the Consent Order drawn up by the parties as if it were his actual judgment and a judgment of the Superior Court.

144. Forever after, that act of signing the Consent Order by the Honorable Stephen F. Eilperin in the municipal courts of the District of Columbia, an act of treating a private agreement between less than all of the parties to the litigation that effectively disposed of the object of the litigation without notice to the other parties or an opportunity for the other parties to participate, despite many efforts by these plaintiffs to have it treated otherwise, that Consent Order has been treated as a judgment and even a *res judicatae* at the instance of Vo and Sun.

145. Yet this was a private act by two or three parties (if you count Vo's company, Suntech) out of six that disposed of the cases of these present plaintiffs as if it were a permanent injunction, not an independent judgment by a judge at all.

146. That this act was not an independent judgment of the defendant Superior Court was recognized by a panel of the United States Court of Appeals of this circuit, in an opinion by Judge, later Chief Judge, Harry Edwards in *Hoai v. Sun Refining & Marketing, Inc.*, 866 F.2d 1515, 275 U.S.App.D.C. 397 (CADC 1989).

147. Thus, the Honorable Stephen F. Eilperin, like the Honorable Annice M. Wagner a few days before, stepped outside the bounds of his judicial discretion, and outside the bounds of his role as a judge, and, using his color and authority as a judge of a municipal court, acquiesced and joined n the collusion between Vo and Sun to give the gas station franchise to Vo and take it away from Hoai and, at the same time, foreclosed any hearing on a possible temporary injunction and made the TRO, which also had been imposed by a judge stepping outside her judicial role, a permanent injunction under the doctrine adopted by the D.C. courts that a judge can do no clear wrong or work any manifest injustice. Judge Eilperin continued the policy begun by Judge Wagner of choosing to join with and assist a would-be ethnic mafia rather than their victim and

those seeking to assist the present plaintiff Hoai as that victim.

148. That this Consent Order was an illegal private act of collusion between Vo, his company Suntech, and Sun was later ruled by this Court in Hoai's successful PMPA case against Sun.

149. After the Court of Appeals opinion cited above, Hoai's PMPA case against Sun went forward in this Court and the present plaintiff Hoai successfully moved for summary judgment against Sun on the precise contention that this Consent Order was an illegal act, a termination of Hoia's franchise by Sun in violation of the PMPA, 15 U.S.C. § 2801 *et seq.* See the October 1, 1990 opinion by the Honorable Louis F. Oberdorfer of this Court which granted summary judgment to the present plaintiff Hoai on the issue of liability in his PMPA suit against Sun after the Court of Appeals opinion cited above reversed the Honorable Judge Louis F. Oberdorfer's initial stay of Hoai's PMPA case, as reported on Lexis-Nexis at 1990 U.S.Dist. Lexis 13015.

150. Since, as this Court has ruled and is now a *res judicatae*, Sun illegally terminated the franchise of Hoai under the PMPA by the private act of the said Consent Order which was given the color and authority of the law of the District of Columbia by the Honorable Stephen F. Eilperin the franchise

at that point clearly did not, by the holdings of this Court and the clear law underlying the holdings of this Court, belong to Vo, it belonged to Hoai.

151. Therefore, since the complaint of Vo and his company, Suntech, in the Superior Court, ignored the controlling law, including that ruled upon in this Court and the United States Court of Appeals for this circuit, and falsely was based almost entirely upon the notion that the franchise belonged to Vo, it should have been dismissed long since and the counter and third-party claims of these plaintiffs in the Superior Court should have been addressed and resolved on their merits.

152. Pursuant to a plan devised by a Superior Court judge to split the claims in the case between the D.C. courts and the federal courts, portions of the claims of the present plaintiffs were tried in this Court and resolved. Yet, after these rulings as set out above were obtained in this Court and the U.S. Court of Appeals for the District of Columbia Circuit, the judges of the municipal D.C. courts have refused to address the merits of the defenses and claims of these plaintiffs in the Superior Court action. They have refused to even examine in light of applicable and controlling authority the contentions of these plaintiffs, or to examine in light of controlling law and the rulings referred to, the baseless complaint of Vo and his company, Suntech.

153. When the complaint of Vo and his company Suntech was removed briefly to this Court and then remanded on other grounds, these plaintiffs filed a Rule 12(b)(6) motion to dismiss the complaint of Vo in light of the controlling authority already cited. That authority was ignored by a Superior Court judge, the Honorable Frederick H. Weisberg, and he thus, without even analyzing the complaint and without even noticing the existence of the controlling law alluded to, rubber stamped the clearly wrong decisions previously set out in the Superior Court and continued the manifest injustice allowed.

154. When the present plaintiff John D. Hemenway nd present counsel for these plaintiffs persisted in attempting to show the baseless nature of Vo's complaint and contentions, including seeking Rule 11 sanctions, the Honorable Frederick H. Weisberg, rather than pay any attention to, much less analyze and apply the controlling law, threatened the present plaintiff John D. Hemenway and the present undersigned counsel with sanctions if they persisted in attempting to show the baseless nature of Vo's claims and to show that the decisions by the Honorable Judge Annice M. Wagner and the Honorable Judge Stephen F. Eilperin, such as they were, were clearly wrong and worked a manifest injustice.

155. Thus the Honorable Judge Frederick H. Weisberg too joined in the effort to assist a would-be Vietnamese ethnic mafia and harm its victim and those who would assist him. It is difficult to conceive more of a manifest injustice than these early decisions that were clearly wrong, as now shown by this Court, and the policy of refusing to correct decisions and actions (even if not properly judicial decisions at all) by judges of the Superior Court that were clearly wrong.

156. After the Honorable Frederick H. Weisberg of the Superior Court imposed a plan upon the litigation whereby the present plaintiffs were to present their federal claims in this Court and then return to the Superior Court of the District of Columbia to finish up their non-federal claims there, and after these plaintiffs had brought and concluded their federal claims in this Court as mandated by the Honorable Judge Frederick H. Weisberg, these plaintiffs returned to the Superior Court to pursue their claims there. At that point, with the above-alleged rulings in place as *res judicatae*, judges of the Superior Court, and the defendant the Honorable Herbert Dixon, Jr. in particular, continued this policy of refusing to correct the clearly wrong early actions and decisions in this case. They refused to apply the rulings of this Court and the United States Court of Appeals as *res judicatae*. The Honorable Judge Herbert B. Dixon, Jr., now seeks to dismiss the defenses, counter and third- party claims of these

present plaintiffs altogether rather than change the policy of not correcting clearly wrong actions and decisions by other judges of the Superior Court early in the case, even a TRO and the Consent Order that had no authority as judicial acts.

XIV.
DEFENDANT D. C. COURT OF APPEALS CONTINUES THE POLICY THAT NO JUDGE OF THE SUPERIOR COURT CAN BE WRONG BY DUCKING

154. The present plaintiffs appealed these clearly wrong early decisions to the defendant District of Columbia Court of Appeals on an interlocutory basis, alleging that these first two and other early decisions in the Superior Court litigation were clearly wrong.

155. The defendant District of Columbia Court of Appeals continued the policy of seeing no wrong and no evil by holding that the clearly wrong early decisions in the case were moot.

156. Rather than analyze and apply the controlling law and so have to find that the decisions and actions of the Honorable Annice M. Wagner and the Honorable Stephen F. Eilperin as alleged above were clearly wrong and worked a manifest injustice inasmuch as they showed the defendant courts assisting a would-be ethnic mafia rather than

applying the law and giving a Vietnamese-American oppressed by such a group the proper benefits of America's legal system, the defendant District of Columbia Court of Appeals ducked by declaring the TRO and the Consent Order moot.

157. These actions and the orders manifesting them were not moot. The clearly wrong TRO had been made into a permanent injunction by the improper and violative decision of the Honorable Stephen F. Eilperin and was still affecting and still does affect, the present plaintiffs. It has been the engine of the suppression of their rights, and that suppression has been protected by the policy complained of.

158. Further, the termination of the franchise of Hoai by Sun when it executed the illegal Consent Order in collusion with Vo, a man its personnel knew was the ringleader of the would-be Vietnamese ethnic mafia, was the very act that this Court found illegal as an improper termination by Sun of Hoai's Sun franchise.

159. In so finding this act illegal this Court ruled that Hoai's damages under the PMPA would be severely limited but that he could, if had brought common law counts relating to the said collusion

between Sun and Vo, have his additional damages heard.

160. In fact Hoai, and the other two present plaintiffs brought such common law counts in the Superior Court litigation when they filed their counter and third-party claims.

161. But, because of the policy complained of in this law suit, those claims have never been allowed to be heard or even treated seriously in the Superior Court, and discovery with regard to them has been blocked and suppressed. Even after this Court ruled, its rulings have not been applied in the Superior Court; instead, every effort has been made to see that the Vietnamese ethnic would-be mafia is not held accountable and Sun's cooperation with that would-be mafia is not held accountable. This is a continuation of the policy complained of in this law suit.

162. The defendant D. C. Court of Appeals has enforced this policy by ducking its responsibility in order to avoid having to point out that the early decisions in the defendant Superior Court were clearly wrong and that the Superior Court continued to avoid correcting them and insisted on siding with the would-be ethnic Vietnamese mafia of which Vo was a ringleader. This avoidance continued as the Honorable Annice M. Wagner, who made the first of the clearl wrong decisions that would have to be

corrected, rose to become Chief Judge of the D. C. Court of Appeals; she retired in June of 2005, at which point the defendant the Honorable Herbert Dixon tried to get rid of the litigation in order to prevent any access to the justice system for these plaintiffs rather than allow a Vietnamese-American and those who came to his assistance to have meaningful access to the justice system

XV.

CONTEMPT FOR THESE PLAINTIFFS AND THEIR CAUSE AND A PLAN IMPOSED ON THE LITIGATION

163. Plaintiffs have previously alleged how the Honorable Frederick H. Weisberg, when the subject litigation was assigned by him, rubber stamped the earlier clearly wrong decisions without ever even bothering to look at the controlling law, though urged to do so many times by these plaintiffs, and also how, when these plaintiffs attacked the baseless nature of Vo's filings, the Honorable Judge Frederick H. Weisberg threatened the present plaintiff John D. Hemenway and the undersigned counsel with sanctions.

164. The Honorable Frederick H. Weisberg also made it clear that he did not want to

acknowledge or hear about the mob style actions of Vo and his cohorts.

165. The Honorable Judge Frederick H. Weisberg made it clear that he wanted the subject litigation to be a dispute between businessmen and that he did not want lies called lies or mob type activity characterized as what it was.

166. The Honorable Judge Frederick H. Weisberg discouraged such accurate descriptions from these plaintiffs and encouraged ridicule of such accusations as engaged in by Vo's counsel and Sun's counsel after Sun switched sides and began to coordinate with the man, Vo, that Sun knew had threatened physical harm to its dealer, the present plaintiff Hoai.

167. The Honorable Judge Frederick H. Weisberg bemoaned the fact that the litigation was contentious and made it clear that he did not think that his court should have to deal with such things as righting the wrongs committed by a would-be ethnic mafia.

168. This was the beginning of the racist attitude, later to unfold more fully, that a mere Vietnamese-American such as the present plaintiff Hoai should not have the right to have the use of the Superior Court to prove and gain compensation for the wrongs that he and the Hemenways alleged had

been committed. Justice was an is denied to a Vietnamese-American set upon as Hoai was.

169. After these plaintiffs initiated their third-party claims against the other members and aiders of the would-be ethnic mafia, and after these plaintiffs brought their federal claims, including Hoai's claim under the PMPA, against Vo and against Sun and other third-party defendants, the Honorable Judge Frederick H. Weisberg then imposed a plan upon the litigation. Under Judge Frederick H. Weisberg's plan, these plaintiffs would try their federal claims then pending in this Court with the Superior Court litigation temporarily suspended while they did that. Judge Frederick H. Weisberg's plan called for the plaintiff then to return to the Superior Court to have the balance of their claims tried there. The claims include the common law claims such as interference with contract, conspiracy and so forth, that they had brought against Vo and Sun as well as others for Sun's having joined with the would-be ethnic mafia to join the oppression of their own dealer at the instance of their local counsel, who had chosen that course rather than simply get Sun dismissed from the case pursuant to the RSSA and the franchise agreement conditions precedent.

170. This plan of splitting the claims between the federal courts and the Superior Court was imposed upon the case by the Honorable Judge

Frederick H. Weisberg following colloquy at hearings on September 16, 1988 and March 14, 1989.

171. In accordance with and in obedience to this plan as imposed by the Honorable Frederick H. Weisberg, these plaintiffs moved for a stay in the Superior Court and that stay was granted. The Superior Court litigation halted pending the resolution of the federal cause of action claims of these plaintiffs in this Court in an Order signed by the defendant, the Honorable Herbert B. Dixon, Jr.

XVI.

THE PROCEEDINGS IN THIS COURT

172. These plaintiffs filed two suits in this Court under the plan imposed upon the litigation by the Honorable Judge Frederick H. Weisberg, suits which duplicated similar counts in their counter and third-party claims in the Superior Court litigation.

173. One suit was dismissed and the other resulted in a summary judgment in favor of the present plaintiff Hoai on liability followed by a jury trial in which a jury awarded him damages, although the damages were limited.

174. The suit that was dismissed was brought by the present plaintiffs pursuant to civil rights statutes including particularly 42 U.S.C. § 1983.

175. At that time it had not yet been established in the case law as it was subsequently. as alleged above, that the District of Columbia and its agencies, including its courts, could be sued as a municipality and municipal agencies under 42 U.S.C. § 1983.

176. Therefore the present plaintiffs at the time sued only Vo, Sun and the private parties under 42 U.S.C. § 1983, and not the present defendants. *Hoai, et al. v. Vo*, Civil Action No. CV 89-2397.

177. As a result, the suit by the present plaintiffs under 42 U.S.C. § 1983 was dismissed on the grounds that there was no governmental involvement alleged, with the finding that what the private defendants were alleged to have done was merely private abuse of process. That dismissal was affirmed on those grounds by the United States Court of Appeals for this circuit.

178. Private abuse of process is addressed in the counter and third-party claims of these plaintiffs in the Superior Court litigation that the defendants have never seriously addressed or allowed to proceed.

179. These abuse of process claims are among those that the defendants have been suppressing and refusing to allow to come to any hearing, full discovery, or even a ruling where the

controlling law is considered and applied in order to deny to these plaintiffs their federal rights as alleged herein and deny to a mere Vietnamese-American the proper benefits of the American legal system because of his race.

180. The present plaintiff Hoai filed another suit in this Court against Sun as the only defendant under the Federal Petroleum Marketing Practices Act (PMPA), a statute which exclusively provides for service station franchisees to sue oil company franchisors. *Hoai v. Sun Refining and Marketing Company, Inc.,* Civil Action No. 87ca02456.

181. In the PMPA suit in this Court, Hoai sought to have the act of entering the private agreement which the Honorable Judge Stephen F. Eilperin signed as a Consent Order declared an illegal termination under the provisions of the PMPA. Hoai succeeded in this effort.

182. By ruling of this Court the private act by which Sun switched sides in the Superior Court litigation and colluded with Vo to take over and operate his franchise, was declared an illegal termination of Hoai's franchise by Sun under the PMPA, meaning, obviously, that the franchise and station never belonged to Vo.

183. Hoai sought in this Court all damages that the PMPA allowed and then this Court

determined what damages were allowed to Hoai under the PMPA.

184. Hoai brought his PMPA action against Sun in this Court in reliance upon the plan imposed upon the litigation by the Honorable Judge H. Weisberg of the Superior Court.

185. According to the Honorable Judge Frederick H. Weisberg's plan, any claims or damages not encompassed in the federal claim pursuant to the PMPA would remain pending in the Superior Court, to be pursued once matters were wound up in this Court and the stay in the Superior Court was then lifted.

186. So that according to the Honorable Judge Frederick H. Weisberg's plan, whatever claims and damages not allowed under the PMPA that Hoai might not recover because of this Court's determination of what damages were allowed under the PMPA would remain to be claimed in the Superior Court under the non-federal claims, particularly tort claims, that Hoai and the other two present plaintiffs had filed in that Court would remain stayed and pending, awaiting the outcome of the determination about the nature and extent of damages under the PMPA in this Court.

187. Although he was informed of the plan of the Superior Court Judge Frederick H. Weisberg,

that these plaintiffs proceed with their federal claims in the federal court and then go back to the Superior Court to finish up their common law claims there, the judge of this Court to whom the case was assigned, the Honorable Louis F. Oberdorfer, sought to avoid taking action and insisted that the claims of Hoai in the Superior Court should go ahead while he stayed action in this Court.

188. The plaintiff Hoai reversed that decision in an interlocutory appeal taken under the collateral order doctrine as already set out. *Hoai v. Sun Refining & Marketing, Inc.*, 866 F.2d 1515, 275 U.S.App.D.C. 397 (CADC 1989).

189. The decision of the Court of Appeals of this circuit found that the Superior Court wanted the federal causes of action to proceed in this Court and found that the consent order of the Superior Court that had effectively turned the original TRO (of which more below) into a permanent injunction without any notice to these plaintiffs as defendants, counter and third-party plaintiffs in that court represented no independent judgment of the Superior Court.

190. On the basis of that decision of the United States Court of Appeals for this circuit, the plaintiff Hoai then obtained summary judgment against Sun on the issue of liability for the illegal

termination of the franchise in violation of the terms of the PMPA.

191. In granting partial summary judgment to the present plaintiff Hoai as the plaintiff in that PMPA case, the judge of this Court held that a Consent Order entered into under the Judge-in-Chambers procedure then in effect in the Superior Court of the District of Columbia between Vo and Sun only, without any notice to Hoai (or for that matter the Hemenways) illegally terminated Hoai's franchise with Sun under the PMPA.

192. This is the same consent order between the two parties Vo and Sun that the United States Court of Appeals for this circuit had already held constituted no independent judgment of the Superior Court. See the October 1, 1990 opinion by Judge Louis F. Oberdorfer, of this Court granting summary judgment to present plaintiff Hoai in his PMPA case against Sun after Hoai reversed the stay of his PMPA action in the U. S. Court of Appeals opinion alleged above. That opinion of this Court is reported on Lexis-Nexis as 1990 U. S. Dist. Lexis 13015.

193. Hoai, as the PMPA plaintiff in this Court, and Sun, as the PMPA defendant, then filed motions and briefs concerning the damages that would be allowed to be tried in this Court before the jury.

194. The Honorable Louis F. Oberdorfer of this Court considered the nature of the damages to be allowed to Hoai against Sun under the PMPA and rendered an opinion in a Memorandum of May 2, 1991, that confined the damages under the PMPA to contract damages, ruling that tort damages would have to be sought separately in separate claims.

195. The Honorable Louis F. Oberdorfer specifically ruled that such tort claims as "abuse of process, wrongful eviction, intentional infliction of emotional distress, conspiracy to interfere with contract, waiver, estoppel,..." and others were not encompassed under the PMPA and could and should be brought separately.

196. Judge Oberdorfer specifically ruled that the PMPA does not prevent franchisees from suing under state law.

197. Hoai and the other two present plaintiffs had sued under D. C. law as coming under Judge Oberdorfer's ruling in their counter and third-party claims in the subject Superior Court litigation for these and other torts.

198. Those claims were pending in the Superior Court when Judge Oberdorfer made the rulings referred to and, under the plain imposed upon the litigation by the Honorable Judge Frederick H. Weisberg, remained stayed there pending the

outcome of the federal litigation, to be taken up and prosecuted when the stay in the Superior Court was lifted.

199. Further, the Honorable Louis F. Oberdorfer, in ruling upon damages to be allowed under the PMPA in the suit brought in this Court by Hoai against Sun under that Act, limited the contract damages that were to go to the jury to a very short term, saying that Sun sent letters of termination of the franchise to Hoai, and gave as a reason for termination, Hoai's problems with Vo that caused Hoai to be absent from the station and unable to run it. This was dicta as Judge Oberdorfer had already held that the Consent Order between Sun and Vo illegally terminated Hoai's franchise and there cannot be two terminations of the franchise.

200. It did cause a problem because it intimated that if Sun colluded with Vo so as to join with Vo and harm Hoai, which is what the Consent Order that was an illegal termination was, Sun would not be responsible. This was also dicta because Judge Oberdorfer specifically ruled that if Hoai wanted damages over and above those allowed by the PMPA he would have to bring separate common law counts, which he had done in the Superior Court and were pending there.

201. The tort claims brought in the Superior Court by Hoai and the other two present plaintiffs

had been stayed and were and are now still standing, encompassing collusive harmful acts in which Vo and others and Sun participated jointly. These plaintiffs are entitled to have Sun held to account for such collusive acts under the plan imposed upon the Superior Court litigation by the Honorable Judge Frederick H. Weisberg. This is particularly true of interference tort claims and conspiracy to interfere type claims.

202. A trial was then held in this Court on the amount of the damages resulting from the illegal termination of Hoai's franchise by Sun as so limited by Judge Oberdorfer and a verdict was returned against Sun. After extensive resistance which was found to have no merit, some five or six years later, Sun paid those damages and an award of counsel fees and expenses under the fee-shifting provisions of the PMPA.

203. After the actions in this Court were over and all appeals exhausted, these present plaintiffs moved to lift the stay in the Superior Court and it was lifted.

XVII.

BACK IN THE SUPERIOR COURT: THE STAY IS LIFTED, THE PLAN IS IMMEDIATELY VIOLATED

203. On December 31, 1997, with all matters in this Court and the U.S. Court of Appeals concluded, these plaintiffs filed a motion in the D.C. Superior Court to lift the stay that had been granted there while the then federal claims of these plaintiffs were tried in this Court, as mandated by the Honorable Judge Frederick H. Weisberg of the Superior Court.

204. The motion to lift the stay in the Superior Court was not opposed and it was granted in an order signed on March 4, 1998 that was docketed on March 12, 1998.

205. At that time there were outstanding in the Superior Court from before the stay a substantial number of motions by these plaintiffs that had not been ruled upon, although fully briefed.

206. Ruling upon these motions would have substantially advanced the litigation.

207. For example, a comprehensive motion to enjoin Vo from proceeding with his suit against these plaintiffs based upon his agreement to abide by the word of Ernie Peele as to who was the dealer and franchisee had been outstanding for years.

208. A motion to compel Vo to give information and allow himself to be fully deposed in accordance with an order he had ignored was outstanding and had been for years.

209. When the stay was lifted these plaintiffs immediately began preparing a comprehensive motion to dismiss Vo's complaint by applying the rulings of this Court such as that the franchise belonged to Hoai and not Vo when it was illegally terminated since this Court, following the U. S. Court of Appeals found that Sun illegally terminated the franchise of Hoai not of Vo and found that Hoai was having difficulty getting Vo out of Hoai's station in which Hoai had to be in as the Sunoco franchise's owner, as one of the factors this Court considered in deciding on damage limitations.

210. A short time later these plaintiffs filed this comprehensive motion to dismiss Vo's Superior Court claim and for other findings based on the rulings in this Court, applied as *res judicatae*.

211. This motion thoroughly presented the case that because this Court had ruled that Sun illegally terminated under the PMPA a franchise and station lease as part of that franchise that belonged to Hoai, it cannot have belonged to Vo and that, further, since this Court had ruled that tort damages could not be obtained by Hoai under the PMPA the tort claims of Hoai and the other two present

plaintiffs left pending in the Superior Court under Judge Weisberg's plan to split the litigation could thus be pursued to their conclusion in the Superior Court with the stay lifted, including those torts, such as interference claims, that involved collusion between Vo and Sun as well as others. This was a request to the Honorable Herbert B. Dixon, Jr., to apply the rulings of this Court, which were *res judicatae* creating issue preclusions.

212. If this motion were ruled upon and the rulings in this Court applied under the plan of the case imposed upon the litigation by the Honorable Judge Frederick H. Weisberg in the Superior Court were applied, the TRO of Judge Annice M. Wagner, the Consent Order signed by Judge Stephen F. Eilperin that made the TRO a permanent injunction and the early opinion of the Honorable Judge Frederick H. Weisberg rubber stamping the TRO of Judge Annice M. Wagner in violation of controlling law would all have to be held to be clearly wrong, the collusion of Sun with Vo under the tort claims of these plaintiffs would have to be addressed, and a manifest injustice would have to be found to have resulted in the form of the racist treatment by which Hoai's complaints against the would-be ethnic mafia that the defendant courts mocked and refused to take seriously would have to be addressed; the American justice system would have to be made available to Hoai and to the Hemenways who assisted him.

213. To this day the defendant Superior Court and the defendant the Honorable Herbert B. Dixon, Jr., have refused to rule upon this motion along with many other motions of these plaintiffs from both before and after the litigation in this Court, all of which motions, if ruled upon, would require the dismissal of the Vo complaint and the prosecution of the claims of these plaintiffs including those claims which include Sun as a third party defendant.

214. Such resolving of outstanding motions in the Superior Court, were the rulings made in this Court and the United States Court of Appeals for this Circuit to be applied, would require a reexamination of the earlier actions and decisions and rulings in the case from the Honorable Annice M. Wagner, the Honorable Stephen F. Eilperin and the Honorable Frederick H. Weisberg and recognitions that their actions, decisions (such as to sign a private agreement between less than all the parties as a Consent Order of the court) and rulings, were clearly wrong and that in this instance the same had worked manifest injustice.

215. Sun had been sued by these plaintiffs in a number of tort counts for its collusion with Vo and his cohorts in giving him the station; these were the tort counts that this Court had ruled could not be

sued for as part of PMPA claim but must be sued for separately.

216. Under the plan of litigation imposed upon the litigation of these plaintiffs it by the Honorable Frederick H. Weisberg of the Superior Court, if the plan had been followed and the *res judicata* of this Court applied, these plaintiffs should have been allowed, once the stay was lifted in the Superior Court, to proceed with their tort claims against Sun as a participant with Vo and others in a number of torts.

217. That did not happen.

218. Before these plaintiffs could complete and file their comprehensive motion, which was quite detailed and had numerous exhibits, Sun filed a quick motion in the Superior Court case for a summary judgment to dismiss itself from the Superior Court case as a third-party defendant.

219. In this motion Sun invited the defendant the Honorable Herbert B. Dixon, Jr. to ignore the plan of the litigation imposed upon it by the Honorable Judge Frederick H. Weisberg of the Superior Court and instead dismiss Sun from the case on summary judgment by applying a false *res judicata*.

220. Sun's hasty motion was based entirely on the concept that since Hoai had brought his PMPA action against Sun in this Court he should have brought all of his tort claims there as well and so should the other two present plaintiffs have done, even though they had no jurisdiction to proceed under the PMPA. Thus Sun was knowingly ignoring the plan imposed upon the litigation by the Honorable Frederick H. Weisberg of the Superior Court and inviting the Superior Court to violate its own plan, to apply the rule that applies when a judge has not split the claims in order to deprive these plaintiffs of their claims pending in the Superior Court.

221. For Sun made no mention in its motion of the Honorable Judge Frederick H. Weisberg's plan of the case that the Honorable Judge Frederick H. Weisberg had imposed upon the case.

222. The defendant the Honorable Herbert B. Dixon, Jr., granted Sun's motion with alacrity.

223. In fact the defendant the Honorable Herbert B. Dixon, Jr., was so anxious to let Sun out of the case that he granted Sun's motion to dismiss itself from the case on summary judgment initially before the time in which these plaintiffs were allowed under Superior Court rules to file their oppositions had even run

224. In dismissing Sun from the litigation so hastily on its quick motion, the defendant the Honorable Herbert B. Dixon, Jr., sent his clerks to research and find authority that would allow him to adopt Sun's position set out in its motion. The defendant the Honorable Herbert B. Dixon, Jr., gave no consideration whatsoever to researching the plan of the case or the position of these plaintiffs as having accepted that plan and obtained the *res judicaatae* that they set out in their motions and filings, including their comprehensive motion detailing how the rulings of this Court should be applied to the Superior Court litigation. When these plaintiffs sought to draw the Honorable Herbert B. Dixon's attention to the authority of the Restatement of Judgments 2d as to a judge's imposition of a plan to split claims as an exception to the rule that claims should not be split, the Honorable Herbert B. Dixon paid no attention to it.

225. The defendant the Honorable Judge Herbert B. Dixon, Jr., never even read that material and never considered the rulings of this Court invoked by these plaintiffs and, therefore, never applied the rulings of this Court from the PMPA case of the present plaintiff Hoai to the proceedings in the Superior Court as *res judicatae*..

226. The defendant the Honorable Herbert B. Dixon, Jr. refused repeatedly to consider and analyze his decision to let Sun out of the case, though

it was clearly wrong and worked a manifest injustice, and did so though to do so was in defiance of the Rulings of this Court.

227. The present plaintiffs made a number of additional filings and motions at that time over a period of months.

228. The defendant the Honorable Judge Herbert B. Dixon, Jr., ignored them all and has continued to do so up until the present time.

229. The present plaintiffs filed an interlocutory appeal of the decision to let Sun out of the case in defiance of the rulings of this Court and the plan of the litigation imposed by the Honorable Frederick H. Weisberg.

230. Sun moved to dismiss the interlocutory appeal.

231. Without giving any reasons, without considering the rulings of this Court, and without considering whether the decision by the defendant the Honorable Herbert B. Dixon, Jr., was clearly wrong or worked a manifest injustice, the defendant D. C. Court of Appeals hurriedly dismissed the appeal.

232. The defendant the Honorable Herbert B. Dixon, Jr., then simply did nothing in the case for

years, refusing to rule upon any motions of these plaintiffs or to consider or study any of their filings, and waited until the judge who had made the original decision to abandon her judicial rule and act as a prosecutor for the would-be ethnic Vietnamese mafia, as led by Vo, against Hoai and the other two present plaintiffs who sought to assist him in order to oppress and beleaguer Hoai, retired in June of 2005. In the meantime the Honorable Annice M. Wagner had risen to great power within the defendant municipal courts, having been moved from civil trial work to head of the probate division and then moved upstairs to the defendant D. C. Court of Appeals and then to Chief Judge of the Court of Appeals.

233. Upon the retirement of the Honorable Annice M. Wagner, in June of 2005, the defendant the Honorable Herbert B. Dixon, Jr., immediately contacted the parties, including Sun, and held a status conference at which he attempted to get the parties, led by Sun and the attorney for Vo, (Vo, in the meantime having disappeared altogether for the second time in the litigation) to simply dismiss everything so that the litigation would conveniently "go away."

234. The present plaintiffs refused to "go away," believing that they were entitled to have their numerous outstanding motions finally ruled upon, to due process under the Fifth Amendment, to have

their defenses and claims ruled upon and heard upon their merits, finally, as part of their right to Petition for the Redress of their Grievances, to have their defenses and claims, to the extent so triable, tried by a jury, and to have a Vietnamese-American, and those who went to his aid under dire circumstances, benefit from the processes of the municipal court system of the District of Columbia just like any other citizen.

235. The defendant the Honorable Herbert B. Dixon, Jr., indicated that he would prefer to see the litigation dismissed and issued a show of cause as to why it should not be dismissed.

236. These plaintiffs responded to the show of cause and over a period of time have demonstrated to the defendant the Honorable Herbert B. Dixon, Jr., with additional filings in their motions and briefs all that is alleged in the present complaint.

237. Yet the defendant the Honorable Herbert B. Dixon, Jr., did, and has to this day done, nothing to correct the clearly wrong decisions in the Superior Court litigation, making it clear that the change of policy complained of herein is in force and that the rulings of this Court will not be applied if to do so would threaten that policy and force the defendants to reexamine and correct a clearly wrong action by a judge of the Superior Court.

238. Upon examining the files of the Superior Court litigation in chambers at the invitation of the Honorable Herbert B. Dixon, Jr., these present plaintiffs found that many of their motions, particularly the dispositive ones, were not in the court file in any coherent and readable form. These defendants have supplied the Honorable Herbert B. Dixon, Jr., with coherent and readable duplicates of their dispositive motions and other filings, and still nothing has been done and no action taken to correct the clearly wrong actions of the Honorable Annice M. Wagner, the Honorable Stephen F. Eilperin, the Honorable Frederick H. Weisberg and others, including the defendant the Honorable Herbert B. Dixon, Jr., himself.

239. Nothing has been done to enforce the Rulings of this Court that were made in Hoai's PMPA action against Sun. In the meantime the plaintiff Vo in the Superior Court, has, for the second time, disappeared. His attorney, who formerly moved successfully to be let out of his representation of Vo the first time that Vo disappeared, (and was allowed to re-enter his appearance over the objection of these present plaintiffs and get paid with the bond that was supposed to secure these plaintiffs) admits now that he has not been able to communicate with his client Vo and has not seen him for years, yet he is allowed to "represent" Vo and a motion to stop this violation of law and the ethics has been ignored.

240. The clear pattern has emerged unequivocally that a large oil company, perceived of as part of the establishment, and non-Vietnamese, will be protected at all costs, even if it cooperates with a gang of criminals. But as to the present plaintiff Hoai and the other two present plaintiffs who came to his aid, the message is clear as regards the American justice system as embodied in the defendant courts: No Vietnamese-Americans need apply.

241. There was clear indication in the files that these plaintiffs were invited to examine in chambers that when the litigation was reopened in the Superior Court, clerks were instructed to find a way to let Sun out of the litigation in violation of the plan of the case imposed upon it by the Honorable Frederick H. Weisberg and in violation of the rulings of this Court considered as *res judicatae*.

242. There was no indication whatsoever that the many motions and filings of these plaintiffs had ever been examined or considered or that any consideration had been given to the plan of the litigation imposed upon it by the Honorable Frederick H. Weisberg or to the rulings of this Court in the PMPA case and of the United States Court of Appeals in accord with that plan.

243. To this date the defendant municipal courts of the District of Columbia have refused to

allow these plaintiffs to reach the merits of their defenses to the claims of Vo and his company Suntech as violative of the law.

244. Instead of allowing these plaintiffs, as it had promised, to pursue their claims in the Superior Court once matters were wound up in the federal courts, the Superior Court has not only blocked, ignored and "sat upon" their claims in every way. The Superior Court has used the excuse of these plaintiffs, having tried their claims separately in the federal courts as they were induced by the Superior Court to do, to try and get the oil company, Sunoco, out of the case and permanently prevent any resolution between the plaintiff Hoai and his Vietnamese adversary in the Superior Court proceeding of the matters in controversy between them as pled in the litigation in that court, thus ignoring its own plan of the litigation as by that time participated in by this Court, to continue to deprive these plaintiffs of their federal rights in violation of 42 U.S.C. § 1983.

245. It has now become evident why these events have transpired as they have, and the real reasons why the D. C. courts and their judges and administrators have wanted this case to "go away" as it involves any resolution of the allegations of plaintiff Hoai and the two non-Vietnamese who sought to assist him about his being set upon by a would-be Vietnamese mafia, and why the D.C. courts

have sought to prevent these plaintiffs from ever having the truth of their allegations of this Vietnamese would-be mafia activity, including threats of violence and even death, reached. That reason is a racial bias against letting a wronged Vietnamese, and those who assisted him, have his day in court against a would-be Vietnamese ethnic mafia that had greatly oppressed and wronged him and with whom both Sun and a prominent judge of the Superior Court (and, later, of the D. C. Court of Appeals) had sided, the latter in the role of a prosecutor and advocate, stepping outside the judicial role and, thus, her jurisdiction, altogether. It is a custom and practice of denying to a member of a particular ethnic and racial group, and those seeking assisting him, the benefits of the American system of justice. Thus a violation also of 42 U.S.C. § 1981 has been perpetrated by these municipal courts.

246. That this was the aim of the Superior Court judges was made evident in June, 2005, when the Superior Court judge then in charge of the case, after ignoring and refusing to consider and rule upon every motion of these plaintiffs to advance their cause literally for years, used the occasion of the retirement of the judge, who made the initial clearly wrong and manifestly unjust decision, to seek to dismiss the case of these plaintiffs for failure to prosecute. Thus, after these plaintiffs tried to prosecute their case over and over again with motion after motion over years, all of which the Superior

Court judges refused to rule or act upon, including particularly the defendant the Honorable Judge Herbert B. Dixon, Jr., the Superior Court through its judge then sought to destroy the rights of these plaintiffs to have their grievances redressed and their claims tried by a jury.

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COUNT SEVEN: VIOLATION OF 42 U.S.C. § 1981: PURPOSEFUL RACIAL DISCRIMINATION

291. Plaintiffs repeat and incorporate herein by reference the allegations of 1 through 290 above.

292. The actions of the defendant Dixon and other judges of the Superior Court in effectively refusing to advance the plaintiffs' case by refusing to decide upon any motion they filed, including dispositive motions and motion to compel the discovery denied them so as to prevent them from developing and pursuing their defenses and claims, while rushing to let Sun out of the case upon the lifting of the stay in the Superior Court after the split out claims were tried in the federal courts with varying success, were done as a purposeful racial discrimination to deny to the plaintiff Hoai and the Hemenways assisting him the benefits of the American system of justice because they were perceived of as a mere Vietnamese and two non-

Vietnamese who had decided to help him when he was set upon by a would-be Vietnamese mafia.

293. Even threats of violence to Hoai were derided and not taken seriously by the Superior Court judges, starting with Judge Wagner at the TRO hearing. After all, these were only disputes among a lesser people, as the attitude has now been revealed, not worthy of finding that decisions that were just plain wrong or manifestly unjust correctable where they might expose an American company, part of the establishment, such as Sun, to liability for its actions in colluding with the would-be Vietnamese mafia against their own contract and their own dealer.

294. The leaping upon the claimed *res judicata* advanced by Sun in violation of the plan of the case under which claims were to be split between the Supererior Court and this Court while ignoring the *res judicatae* advanced by these plaintiffs under the plan as imposed by the defendant Superior Court, the racial bias was made glaringly evident.

WHEREFORE, these plaintiffs pray in this Count Seven that this Court:

G. Declare that a Vietnamese-American claiming to be set upon and wronged by a would-be mafia of his own ethnic group is entitled to have those claims heard and to have due process and the right to proceed in the courts of the District of Columbia and so too do those who seek to assist him;

H. That Hoai and the Hemenways have their full rights to benefit from the procedures of the D.C. Courts even in a non-Vietnamese entity, Sun, may be implicated and have to bear liability as a result;

I. That the District of Columbia Courts be enjoined to proceed in accordance with the above declarations and allow the full measure of justice to these plaintiffs with all their rights honored and their causes heard;

J. That all of the defenses and claims of these plaintiffs that are so triable be tried before a jury without allowing Sun to be dismissed from the case in the Superior Court on any pretense of violation of any *res judicata* that ignores the plan of the case imposed by the Superior Court;

K. That these plaintiffs be awarded their costs of this litigation, including counsel fees, pursuant to 42 U.S.C. § 1988.

L. An award against the defendant courts of the District of Columbia and other defendants as appropriate of all the extra costs, including counsel fees, caused directly to the plaintiff Hoai by the actions complained of.

M. Such further and other relief in law and equity as to this Court may seem meet and just.

WITH REGARD TO ALL COUNTS, PLAINTIFFS DEMAND IMMEDIATE, TEMPORARY AND PERMANENT INJUNCTIVE RELIEF AND WILL SEEK A TRO IN SUPPORT.

PLAINTIFFS DEMAND A TRIAL BY JURY

Respectfully submitted,

_____

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CONSTITUTIONAL PROVISIONS AND STATUTES

Art. IV: Privileges and Immunities: "Section 2. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states."

First Amendment Right to Petition: "Congress shall make no law ... prohibiting ... the right of the people ... to petition the government for a redress of grievances."

Fifth Amendment Due Process Clause: "No person shall be ... be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

Seventh Amendment Right to trial by Jury:

> "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any court of the United States, than according to the rules of the common law."

Fourteenth Amendment Equal Protection and Due Process Clauses:

"Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

42 U.S.C. § 1983:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper

proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive

relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

42 U.S.C. § 1981:

(a) **Statement of equal rights**

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

* * * *

(c) **Protection against impairment**

The rights protected by this section are protected against impairment by nongovernmental discrimination and impairment under color of State law.

42 U.S.C.§ 1988:

(a) **Applicability of statutory and common law**

The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of titles 13, 24, and 70 of the Revised Statutes for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State

wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty.

(b) Attorney's fees

In any action or proceeding to enforce a provision of sections 1981, 1981a, 1982, 1983, 1985, and 1986 of this title, title IX of Public Law 92–318 [20 U.S.C. 1681 et seq.], the Religious Freedom Restoration Act of 1993 [42 U.S.C. 2000bb et seq.], the Religious Land Use and Institutionalized Persons Act of 2000 [42 U.S.C. 2000cc et seq.], title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], or section 13981 of this title, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial

capacity such officer shall not be held liable for any costs, including attorney's fees, unless such action was clearly in excess of such officer's jurisdiction.

(c) **Expert fees**

In awarding an attorney's fee under subsection (b) of this section in any action or proceeding to enforce a provision of section 1981 or 1981a of this title, the court, in its discretion, may include expert fees as part of the attorney's fee.